CLERK'S COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 783

LOCAL LOAN COMPANY, PETITIONER,

vs.

WILLIAM HUNT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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[fols. a–1] Placita omitted in printing

[fol. 2]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 46600

In the Matter of WILLIAM HUNT, Bankrupt

PETITION—Filed Nov. 14, 1932

To the Honorable George A. Carpenter, Judge of the United States District Court:

Your petitioner, William Hunt, respectfully shows to the court that he is, and was during the times hereinafter mentioned, a citizen and resident of Chicago, Illinois; that prior to and during said times he was and now is employed by the Grand Trunk Western Railroad Company in Chicago, Illinois.

Your petitioner further shows that on September 17, 1930, he borrowed the sum of Three Hundred Dollars ($300) from the Local Loan Company of Chicago, Illinois; that said loan was evidenced by his promissory note payable to said Local Loan Company bearing date September 17, 1930; that at the request of said Local Loan Company he executed an assignment of his wages as security for said loan whereby he assigned a certain portion of his wages to be earned by him in the future; that on, to-wit, January 30, 1931, a copy of said assignment and notice thereof was served by said Local Loan Company on his employer, Grand Trunk Western Railroad Company, Chicago, Illinois, at which time he was still indebted to said Local Loan Company; that on, to-wit, February 12, 1931, [fol. 3] said Local Loan Company notified his said employer in writing that it thereby withdrew the aforesaid notice of assignment of petitioner's wages, thereby releasing all moneys held by his said employer thereunder.

Your petitioner further shows that on March 3, 1931, he filed his voluntary petition in bankruptcy in this court; that he duly scheduled in said proceedings his obligation to said Local Loan Company, which obligation was a prov-

able debt within the Bankruptcy Act; that on March 4, 1931 this court duly issued a restraining order whereby said Local Loan Company, its agents and attorneys, was restrained and enjoined from proceeding further in and about the collection of its claim either at law or in any other manner until further order of this court; that he was duly adjudicated a bankrupt; that on October 10, 1932, an order of discharge was entered by this court.

Your petitioner further shows that thereafter, on, to-wit, October 17, 1932, said Local Loan Company served a notice of the aforesaid assignment of his wages upon his employer, Grand Trunk Western Railroad Company, and on October 18, 1932 filed a suit upon petitioner's aforesaid assignment of wages in the Municipal Court of Chicago, Illinois, entitled Local Loan Company vs. Grand Trunk Western Railroad Company, being case No. 2164688, in which said suit Local Loan Company claims to have served another notice of petitioner's assignment of wages on the Grand Trunk Western Railroad Company on February 20, 1931.

Your petitioner further shows that under the Bankruptcy Act and decisions of the Federal Courts the aforesaid assignment of wages was extinguished; that your petitioner has no adequate remedy at law to preserve the rights secured to him by his adjudication and discharge in the said bankruptcy proceedings; that if said Local Loan Company, its assigns, agents or attorneys, are not permanently enjoined from prosecuting said above mentioned suit or its alleged claim under said assignment of wages, your petitioner will be deprived of the benefits secured to him under the Bankruptcy Act.

Wherefore, your petitioner prays that leave be given to him to file this petition; that an order be entered upon said Local Loan Company requiring it to answer said petition within such time as the court may determine; and prays that upon the hearing of this petition and said answer thereto that an order be entered herein permanently re- [fol. 4] straining and enjoining the said Local Loan Company, its assigns, agents or attorneys, from prosecuting its said suit entitled Local Loan Company vs. Grand Trunk Western Railroad Company, bearing No. 2164688, now pending in the Municipal Court of Chicago, and from proceeding further about the prosecution and enforcement of

its alleged claim upon the aforesaid assignment of wages either in law, equity or in any other manner in so far as such attempted prosecution or enforcement shall relate to wages earned by your petitioner subsequent to the date of the filing of your petitioner's petition to be adjudged a bankrupt, to wit, March 3, 1931, and that pending the disposition of this matter that said Local Loan Company, its agents, and attorneys may be restrained from proceeding further in said suit in the Municipal Court of Chicago.

William Hunt.

Duly sworn to by William Hunt. Jurat omitted in printing.

[fol. 5] IN UNITED STATES DISTRICT COURT

AMENDED ANSWER OF LOCAL LOAN CO., A CORPORATION, TO PETITION FILED BY BANKRUPT ON NOVEMBER 14, 1932—Filed Feb. 8, 1933

Now comes the respondent, Local Loan Co., a corporation, and leave of court having been first asked and obtained, files this its amended answer to the petition of William Hunt, the bankrupt in the above-entitled cause.

This respondent, Local Loan Co., a corporation, by Orville W. Lee, its attorney, represents unto the court that it is a corporation organized under the laws of the State of Delaware and licensed to do business in the State of Illinois, and maintains its principal office at 105 W. Madison Street, Chicago, Illinois. That said corporation is duly licensed to do business under an "Act to license and regulate the business of making loans in sums of three hundred dollars or less, secured or unsecured, at a greater rate of interest than seven per centum per annum, prescribing the rate of interest and charge therefor and penalties for the violation thereof, and regulating the assignment of wages or salaries earned or to be earned, when given as security for any such loan," which act was approved June 14, 1917, L. 1917, p. 553, and amendments thereto; said act is set out in Sections 13 to 18, inclusive, Chapter 74, Smith-Hurd's Illinois Revised Statutes, 1931.

This respondent admits that its claim against said William Hunt on his said note of September 17, 1930, evidenc-

ing a loan in the sum of Three Hundred ($300.00) Dollars from this respondent to the petitioner was duly scheduled in the above bankruptcy proceedings and that it filed no claim against said bankrupt's estate nor made any proof thereof.

This respondent further answering admits that on said September 17, 1930, said William Hunt executed at the same time of the execution of said note said assignment [fol. 6] of wages earned and to be earned by him in the future as security for said loan to the Local Loan Co.

This respondent further answering admits that on, to-wit January 30, 1931, a verified copy of said assignment and notice thereof was served by it on the Grand Trunk Western Railroad Company, and that at the said time said William Hunt was still indebted to said Local Loan Co. in the sum of Two Hundred Sixty-nine and 55/100 ($269.55) Dollars, having paid on said loan the sum of Thirty and 45/100 ($30.45) Dollars. This respondent further alleges that the balance of said loan has never at any time been repaid to it.

This respondent further answering admits that on February 12, 1931, it notified said Grand Trunk Western Railroad Company in writing that it thereby withdrew the aforesaid notice of assignment, thereby releasing all money held by said railroad thereunder.

This respondent further answering admits that on March 3, 931, the said William Hunt filed his voluntary petition in bankruptcy in this court and that he duly scheduled in said proceedings his said obligation to this respondent as evidenced by said note, which was a provable debt within the Bankruptcy Act, and admits that on March 4, 1931, a restraining order was duly issued out of this Court whereby this respondent, its agents and attorneys were restrained and enjoined from proceeding further in and about the collection of this claim either at law or in any other manner until the further order of this court, and that on October 10, 1932, an order discharging the bankrupt from all of his provable debts was entered by this court.

This respondent further represents that hereafter on, to-wit, October 17, 1932, it served a notice and verified copy of the aforesaid assignment of wages upon the Grand Trunk Western Railroad Company, which said notice of

assignment has never been withdrawn or released by this respondent, and represents that on October 18, 1932, it filed a suit in the Municipal Court of Chicago entitled "Local Loan Company, a corporation, vs. Grand Trunk Western Railroad Company, a corporation, case No. 2164688", in which said suit this respondent claimed to have served another notice of its assignment of wages on the Grand Trunk Western Railroad Company on February 20, 1931, and sought to recover under the aforesaid assignment of wages.

This respondent further represents that said William Hunt was not made a party to said suit, but that said [fol. 7] William Hunt had due notice thereof as provided by statute and has a right to intervene in said suit pending in the Municipal Court of Chicago and to assert whatever rights or defenses he might have to said action, pursuant to Section 18 of Chapter 110 of Smith-Hurd's Illinois Revised Statutes, 1931; that said William Hunt had and has no defense to said action based on said assignment of wages except a plea of his discharge in Bankruptcy which defense under the law of Illinois is not recognized as a legal defense in said suit in the Municipal Court of Chicago or State Courts of Illinois; and that the said Grand Trunk Western Railroad Company had and has no defense to said suit in said Courts based upon a plea of discharge of said William Hunt, because such defense is not recognized as a legal defense to said Grand Trunk Western Railroad Company in said suit under the law of Illinois.

This respondent admits unto the Court that on October 10, 1932, an order of discharge was entered in the above-entitled cause by this honorable court, and says, therefore, that the said cause is now disposed of, and this honorable court has no further jurisdiction of the parties or the subject matter, and has no power under the law or ex proprio vigore thereafter to enter a restraining order either temporarily or permanently restraining this respondent.

This respondent further answering says that the petitioner seeks to have an order entered permanently restraining and enjoining this respondent, contrary to the United States Bankruptcy Laws, which provide only for a stay pending the discharge or until the expiration of such

time as is allowed to the bankrupt to apply for his discharge.

This respondent further answering says that since the bankrupt has received a discharge, the Court, by the limitation of the Bankruptcy Act itself, has no legal authority to enlarge the scope of such discharge, and the bankrupt's only remedy after discharge is to set up such discharge in any action taken against him.

This respondent, therefore, submits that the prayer of the petition of the bankrupt herein should be denied and the bankrupt's petition dismissed.

Local Loan Co., a Corporation, by Orville W. Lee,
Its Attorney.

[fol. 8] IN UNITED STATES DISTRICT COURT

ORDER OR DECREE—Entered Feb. 8, 1933

This Matter Coming on to be heard on the duly verified petition of William Hunt filed herein on November 14, 1932, and the amended answer of the Local Loan Co., a corporation, filed February 8, 1933, to said petition, the Court, after considering said petition and amended answer, and the arguments of counsel for both of said parties, no evidence having been offered by either party, and being now fully advised in the premises, finds:

(a) That it has jurisdiction of the parties, the said William Hunt and the said Local Loan Co., a corporation.

(b) That the said Local Loan Co. is a corporation organized under the laws of the State of Delaware, and licensed to do business in the State of Illinois, and maintains its principal office at 105 West Madison Street, Chicago, Illinois. That said corporation is duly licensed to do business under an "Act to license and regulate the business of making loans in sums of Three Hundred ($300.00) Dollars or less, secured or unsecured, at a greater rate of interest than Seven (7%) per centum per annum, prescribing the rate of interest and charge therefor and penalties for the violation thereof, and regulating the assignment of wages or salaries earned or to be earned, when given as security for any such loan," which act was approved June 14, 1917, L. 1917, p. 553, and amendments

thereto; said act is set out in Sections 13 to 18 inclusive, Chapter 74, Smith-Hurd's Illinois Revised Statutes, 1931;

(c) That it has jurisdiction of the subject matter; and

(d) That said William Hunt now is and was during the times hereinafter mentioned a citizen and resident of Chicago, Illinois; that prior to and during said times he was and now is and continuously since the giving of the assign- [fol. 9] ment on September 17, 1930, hereinafter referred to, has been employed by the Grand Trunk Western Railroad Company, a corporation, in Chicago, Illinois;

That on September 17, 1930, said William Hunt borrowed the sum of Three Hundred ($300.00) Dollars from the Local Loan Company of Chicago, Illinois; that the said loan was evidenced by his promissory note payable to said Local Loan Company bearing date September 17, 1930; that on said September 17, 1930, he executed an assignment of his salary and wages earned and to be earned by him with said Grand Trunk Western Railroad Company as security for said loan; that on, to-wit January 30, 1931, a verified copy of said assignment and notice thereof was served by said Local Loan Company on his employer, said Grand Trunk Western Railroad Company, Chicago, Illinois, at which time he was still indebted to said Local Loan Company; that on, to-wit, February 12, 1931, said Local Loan Company notified his said employer in writing that it thereby withdrew the aforesaid notice of assignment of said William Hunt's wages, thereby releasing all moneys held by his said employer thereunder;

That on March 3, 1931, said William Hunt filed his voluntary petition in bankruptcy in this court; that he duly scheduled in said proceedings his obligation to said Local Loan Company, as evidenced by his said note, which obligation was a provable debt within the Bankruptcy Act; that no claim thereon was filed by the Local Loan Co. in said cause nor any proof taken thereon; that on March 4, 1931, this Court duly issued a restraining order in usual form, whereby said Local Loan Company, its agents and attorneys, were restrained and enjoined from proceeding further in and about the collection of its claim either at law or in any other manner until further order of this Court; that on March 6, 1931, the bankrupt herein was duly adjudicated a bankrupt; that on October 10, 1932, an order of discharge

from all provable debts was entered by this Court in usual form;

That thereafter on, to-wit, October 17, 1932, said Local Loan Company served a notice and verified copy of the aforesaid assignment of said William Hunt's wages upon his employer, Grand Trunk Western Railroad Company, which has not been withdrawn or released by said Local Loan Co., and on October 18, 1932, said Local Loan Co. filed a suit upon said William Hunt's aforesaid assignment of wages in the Municipal Court of Chicago, Illinois, entitled Local Loan Company vs. Grand Trunk Western Rail-
[fol. 10] road Company, being case No. 2164688, which said suit is still pending and undisposed of, said William Hunt not being a party thereto.

That said William Hunt had a right to intervene in said suit pending in the Municipal Court of Chicago and to assert whatever rights or defenses he might have to said action, pursuant to Section 18 of Chapter 110 of Smith-Hurd's Illinois Revised Statutes 1931; that said William Hunt had and has no defense to said action based on said assignment of wages except a plea of his discharge in bankruptcy, which defense, under the law of Illinois, is not recognized as a legal defense in said suit in the Municipal Court of Chicago or State Courts of Illinois; and that the said Grand Trunk Western Railroad Company had and has no defense to said suit in said Court based upon a plea of discharge of said William Hunt, because such defense is not recognized as a legal defense to said Grand Trunk Western Railroad Company in said suit under the law of Illinois.

It Is Therefore Ordered, Adjudged And Decreed that the Local Loan Company, a corporation, be and it is hereby ordered to withdraw any and all notices of the assignment of wages by said William Hunt to the Local Loan Company on September 17, 1930, heretofore served by said Local Loan Company, a corporation, on the Grand Trunk Western Railroad Company, a corporation, within ten days from the date of this order; that the said Local Loan Company, a corporation, its assigns, agents or attorneys be and they are hereby permanently restrained and enjoined from prosecuting the suit now pending in the Municipal Court of Chicago entitled "Local Loan Company, a corporation, vs. Grand Trunk Western Railroad Company, a corporation,

case No. 2164688"; that said Local Loan Company, a corporation, its assigns, agents and attorneys, be and they hereby are permanently restrained and enjoined from proceeding further in and about the prosecution and enforcement of the claim of the said Local Loan Company by virtue of the assignment of wages signed by William Hunt on September 17, 1930, and by him delivered to said Local Loan Company, either in law, equity or in any other manner insofar as such attempted prosecution or enforcement shall relate to wages earned by said William Hunt subsequent to March 6, 1931.

Enter:

Carpenter, Judge of the United States District Court.

Dated this 8th day of February, A. D. 1933.

[fol. 11] To the entry of which order the respondent, Local Loan Company, a corporation, by its counsel duly objects, and said objection having been overruled, duly excepts.

Enter:

Carpenter, Judge of the United States District Court.

8 Feb., 1933.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD

To the Honorable Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Whereas an appeal has been taken by the aforesaid appellant, Local Loan Co., from an order and decree heretofore on, to-wit, February 8, 1933 entered by the District Court of the United States, for the Northern District of Illinois, Eastern Division, in the matter of William Hunt, Bankrupt, heretofore pending in said District Court of the United States, for the Northern District of Illinois, under No. 46600;

Now, Therefore, in making up the transcript of record for the Circuit Court of Appeals for the Seventh Circuit in connection with said appeal, will you kindly include therein—

1. Petition of William Hunt, Bankrupt, filed November 14, 1932.
2. Amended answer of Local Loan Co. to said petition filed on February 8, 1933.
3. Order and decree of the District Court of the United States entered by the Honorable George A. Carpenter, Judge of said District Court on February 8, 1933.
4. Citation and receipt of service.
5. Copy of præcipe and receipt of service.

Frederic Burnham, David F. Rosenthal, Orville W. Lee, Attorneys for Appellant, Local Loan Co.

Received a copy of the foregoing Præcipe this 24th day of February, 1933.

Wilson & McIlvaine, Attorneys for William Hunt, Appellee.

[fol. 12] Clerk's Certificate to foregoing transcript omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

NOTICE OF APPEAL.—Filed Feb. 18, 1933

To Wilson & McIlvaine, Attorneys for William Hunt, Bankrupt:

You are hereby Notified that we intend to present to the Circuit Court of Appeals for the Seventh Circuit, a petition for appeal from the order heretofore entered herein on February 8, 1933, enjoining and restraining Local Loan Co. from the further prosecution of a certain suit pending in the Municipal Court of Chicago, based upon the assignment of future wages of said William Hunt.

Local Loan Co., by Frederic Burnham, David F. Rosenthal, Orville W. Lee.

We hereby acknowledge receipt of a copy of the foregoing petition for appeal this 17th day of February, 1933, and waive further notice of the exact time of presentation of said petition to said Circuit Court of Appeals, and our right, if any, to be present at the presentation thereof.

Wilson & McIlvaine, Attorneys for Appellee, said William Hunt, Bankrupt.

[fol. 13] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

In the Matter of WILLIAM HUNT, Bankrupt, Formerly Pending in the District Court of the United States under No. 46,600

PETITION FOR APPEAL—Filed Feb. 18, 1933

To the Honorable Judges of the Circuit Court of Appeals for the Seventh Circuit:

Your petitioner, Local Loan Co., a corporation, represents that on, to-wit, November 10, 1932, William Hunt, the aforesaid bankrupt, filed his petition in The Matter of William Hunt, Bankrupt, which matter had theretofore been pending in the United States District Court, for the Northern District of Illinois, Eastern Division thereof, under No. 46,600; that a certified copy of said petition is hereto attached, marked Exhibit "A" and by reference incorporated herein, the same as though fully set forth; that in and by said petition said William Hunt represented that on September 17, 1930, he borrowed, at Chicago, Illinois, the sum of Three Hundred Dollars ($300) from the Local Loan Co., a corporation, your petitioner herein, evidencing said loan by a note and securing the same by an assignment of his wages earned and to be earned; that on March 3, 1931, he filed his voluntary petition in bankruptcy, and scheduled said claim of said Local Loan Co.; that on October 10, 1932, he was discharged in bankruptcy by an order of said United States District Court; that on October 17, 1932, said Local Loan Co. served notice of the aforesaid assignment upon said Hunt's employer, and filed a suit upon said assignment in the Municipal Court of Chicago, under No. 2164688, wherein said Local Loan Co. was plaintiff and Grand Trunk Western Railroad Company, said Hunt's employer, was defendant; and said petitioner Hunt claimed in and by said petition that under the Bankruptcy Act and decisions of the Federal courts, said assignment of wages had been extinguished by his discharge [fol. 14] in bankruptcy, and prayed that the further prosecution of said suit in said Municipal Court of Chicago be enjoined.

Your petitioner, Local Loan Co., further represents that it duly filed its answer and also its amended answer to

said petition of said William Hunt, a copy of which said amended answer is hereto attached, marked Exhibit "B" and incorporated herein by reference, the same as though fully set forth herein; that in and by said answer, said Local Loan Co. set forth that it did not file or prove its claim against said Hunt in said bankruptcy case; that said Hunt had a right under the Statutes of the State of Illinois, to intervene in said case brought upon said assignment in the Municipal Court of Chicago, as aforesaid, and to present there whatever rights or defenses he might have to said action; that said Hunt had and has no defense to said action on said assignment of wages, except a plea of his discharge in bankruptcy; that said defense, under the laws of Illinois, is not recognized as a legal defense under the circumstances aforesaid; and that the defendant in said case so pending in the Municipal Court, as aforesaid, had and has no defense to said suit for the same reason; and your petitioner in said answer further averred that by limitation of the Bankruptcy Act itself, said District Court has no legal authority to enlarge the scope of such discharge, and that the bankrupt's only remedy after discharge is to set up such discharge in any action taken against him.

Your petitioner further represents that said matter came on to be heard on said petition of said William Hunt and the aforesaid amended answer of Local Loan Co., your petitioner herein; that no evidence was taken; that there was no dispute as to any of the facts; that briefs and arguments were submitted by counsel for both parties, and that the court thereafter on the 8th day of February 1933, entered its order, finding, among other things, the facts herein set forth, and ordering, adjudging and decreeing that said Local Loan Co., within ten days from the date of this order, withdraw any and all notices of the aforesaid assignment of wages made by said William Hunt, as aforesaid, and served upon the employer of said William Hunt, as aforesaid, and permanently enjoined and restrained said Local Loan Co., a corporation, from prosecuting the aforesaid suit now pending in said Municipal Court of Chicago, and from enforcing the claim of said Local Loan Co. by virtue of said assignment, in so far as such attempted prosecution or enforcement should relate to wages earned by said Hunt subsequent to March 6, 1931, a certified copy of which

[fol. 15] said order is hereto attached, marked Exhibit "C" and by reference thereto incorporated herein, the same as though fully set forth herein.

That your petitioner duly objected to the entry of such decree, and upon such objection being duly overruled, duly accepted.

Wherefore, your petitioner, Local Loan Co., a corporation, feeling itself aggrieved by said order of said United States District Court made and entered on February 8, 1933, as aforesaid, in the Matter of William Hunt, Bankrupt, No. 46,600, in the United States District Court for the Northern District of Illinois, Eastern Division thereof, does hereby appeal from said order and decree for the reasons specified in the Assignment of Errors filed herewith and hereto attached.

Wherefore, Also, said Local Loan Co., a corporation, prays that its said appeal be allowed, and that a citation be issued as provided by law, directed to said William Hunt, commanding him to appear before said United States Circuit Court of Appeals, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and all proceedings in the case, and upon which said order and decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, under the rules of such court in such case made and provided; and your petitioner further prays that a proper order relating to the required security to be required of it be made, and that execution of said order and decree be stayed herein, and that said appeal may operate as a supersedeas.

And your petitioner shows that it has given to Wilson & McIlvaine, attorneys for said William Hunt, its opponent and adversary in this proceeding, due notice of this petition for appeal, and of its intention to present the same, and has served said attorneys with a copy of this petition for appeal and the Assignment of Errors attached thereto, and has received an acknowledgment of the receipt thereof, and a waiver of notice of the exact time of presentation, and of the right, if any, to be present at said presentation.

Local Loan Co., by Thomas D. Griffin, Vice President. Frederic Burnham, David F. Rosenthal, Orville W. Lee, Attorneys for Local Loan Co.

[fol. 16] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Feb. 18, 1933

Now comes Local Loan Co., a corporation, petitioner in the foregoing petition for appeal, by Frederic Burnham, David F. Rosenthal and Orville W. Lee, its attorneys, and presents and files this its Assignment of Errors, on which it will rely upon its prosecution of its appeal in said cause from the order and decree entered by said United States District Court, for the Northern District of Illinois, in the Matter of William Hunt, Bankrupt, No. 46,600, and says that in the record and proceedings, and also in the said decree, there are manifest errors, as follows:

1. The District Court erred in holding that it had jurisdiction of said William Hunt and said Local Loan Co., a corporation, the parties to the petition filed on November 14, 1932, to enjoin and restrain Local Loan Co. from proceeding with the prosecution of a suit brought by said Local Loan Co. upon an assignment of wages made by said Hunt prior to his discharge in bankruptcy, and from enforcing said assignment of wages in any way.

2. The said District Court erred in holding that it had jurisdiction of the subject matter of said petition.

3. The said District Court erred in failing to hold that it did not have jurisdiction of the subject-matter of said petition.

4. The said District Court erred in failing to hold that said assignment had not been discharged by the order discharging said William Hunt in bankruptcy.

5. The said District Court erred in not holding that said assignment was in full force and effect in spite of the discharge of said William Hunt in bankruptcy.

6. Said District Court erred in not holding that the lien of an assignment of future wages is a property right in Illinois, and not dischargeable in bankruptcy.

[fol. 17] 7. The said District Court erred in not holding that it was bound to follow the decisions of the Supreme

Court of Illinois holding that an assignment such as that in the case at bar, made more than four months before adjudication in bankruptcy, and given to secure an indebtedness, creates a lien on future wages, which is not dischargeable in bankruptcy.

8. The said District Court erred in permanently enjoining and restraining said Local Loan Co. from prosecuting the suit now pending in the Municipal Court of Chicago entitled, Local Loan Co., a corporation, v. Grand Trunk Western Railroad Company, a corporation, Case No. 2164688.

9. The said District Court erred in permanently enjoining and restraining said Local Loan Co. from proceeding further in and about the prosecution and enforcement of the claim of said Local Loan Co. by virtue of the assignment of wages assigned by William Hunt on September 17, 1930.

10. The order and decree of said District Court entered on February 8, 1933, is contrary to the law.

Frederic Burnham, David F. Rosenthal, Orville W. Lee, Attorneys for Local Loan Co., Appellant.

(Attached hereto are certified copies of amended answer of Local Loan Co. and order of Feb. 8, 1933, and petition filed Nov. 14, 1932, in the U. S. District Court, which appear elsewhere in this printed record and are not reproduced here.)

[File endorsement omitted.]

[fol. 18] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

ORDER ALLOWING APPEAL, ETC.—Entered and Filed Feb. 18, 1933

This Cause coming on to be heard this day upon the petition for appeal by Local Loan Co., a corporation, from the order and decree heretofore entered on February 8, 1933,

in the matter of William Hunt, Bankrupt, by the District Court of the United States for the Northern District of Illinois, Eastern Division, enjoining and restraining said Local Loan Co. from prosecuting a certain suit pending in the Municipal Court of Chicago under No. 2164688, the Court having read said petition and being fully advised in the premises, doth Order that the appeal of said Local Loan Co. be and the same is hereby allowed upon the filing of a bond with good and sufficient security in the sum of $250, to be approved by this Court, and said bond with surety having been presented, the same is hereby approved, and the Court doth further Order that a citation issue as provided by law, directed to said appellee, William Hunt, commanding him to appear before the United States Circuit Court of Appeals to do and receive what may appertain to justice to be done in the premises and that a transcript of the record and all proceedings in the case and upon which said order and decree is based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, under the rules of said Court in such case made and provided, and the Court doth further Order and Decree that the execution of said order and decree appealed from be and the same is hereby stayed, and that said appeal operate as a supersedeas.

[fols. 19 & 20] Bond on Appeal for $250.00, approved and filed Feb. 18, —, omitted in printing.

[fols. 21 & 22] Citation in usual form showing service on Wilson & McIlvaine, filed Feb. 21, 1933, omitted in printing.

[fols. 23 & 24] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 25] Placita omitted in printing

IN UNITED STATES CIRCUIT COURT OF APPEALS; SEVENTH CIRCUIT

4936

In the Matter of WILLIAM HUNT, Bankrupt

LOCAL LOAN COMPANY, a Corporation,

vs.

WILLIAM HUNT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

MEMORANDA IN RE FILING OF CERTAIN PAPERS

And on, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court a notice of appeal, which said notice of appeal is not copied here, as the same appears on page 12 of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court a petition for appeal, which said petition for appeal is not copied here, as the same appears on pages 13 to 15, inclusive, of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court an assignment of errors, which said assignment of errors is not copied here, as the same appears on pages 16 and 17 of the printed record in this cause, certified herewith.

[fol. 26] And on the same day, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court a certified copy of petition of William Hunt, filed in the District Court on November 14, 1932, which said certified copy of petition is not copied here, as the same appears on pages 2 to 4, inclusive, of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court a certified copy of the amended answer of Local Loan Company, filed in the District Court on February 8, 1933, which said certified copy of the amended answer is not copied here, as the same appears on pages 5 to 7, inclusive, of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court a certified copy of order or decree, entered on February 8, 1933, in the District Court, which said certified copy of order or decree is not copied here, as the same appears on pages 8 to 10, inclusive, of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court an order allowing appeal and approving bond, which said order allowing appeal and approving bond is not copied here, as the same appears on pages 18 and 19 of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the eighteenth day of February, 1933, there was filed in the office of the Clerk of this court the appeal bond of Local Loan Company, which said appeal bond is not copied here, as the same appears on pages 19 and 20 of the printed record in this cause, certified herewith.

[fols. 27 & 28] And afterwards, to-wit: On the twenty-first day of February, 1933, there was filed in the office of the Clerk of this court a citation on appeal, which said citation is not copied here, as the same appears on page 21 of the printed record in this cause, certified herewith.

Appearances of counsel omitted in printing.

[fol. 29] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

NOTICE OF MOTION FOR SUBSTITUTION OF ATTORNEYS—Filed April 21, 1933

To Hon. Frederic Burnham, Hon. David F. Rosenthal, 231 South La Salle Street, Chicago, Illinois; Hon. Orville W. Lee, 105 West Madison Street, Chicago, Illinois:

Please take notice that on Friday, the 21st day of April, A. D. 1933, at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard before the United States Circuit Court of Appeals, or before such of the Judges of said Court as shall then be sitting in Chambers, being Room No. 752, Federal Building, Chicago, Illinois, the undersigned will move for leave to be substituted in the place and stead of Silas H. Strawn, Frank H. Towner and Guy A. Gladson as attorneys for William Hunt, Bankrupt, Appellee, at which time and place you may appear if you so see fit. Said motion is supported by a voluntary withdrawal and substitution of attorneys, copy of which motion is handed you herewith.

Lloyd A. Faxon, 231 South La Salle Street. Harry F. Wiggins, 231 South La Salle Street.

[fol. 30] Received a copy of the foregoing notice this 20th day of April, A. D. 1933.

Frederick Burnham, David F. Rosenthal, Orville W. Lee.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Title omitted]

WITHDRAWAL AND SUBSTITUTION OF ATTORNEYS—Filed April 21, 1933

We hereby withdraw as attorneys for the Appellee, William Hunt, in the above entitled cause.

Silas H. Strawn, Frank H. Towner, Guy A. Gladson.

We hereby enter our appearance as attorneys for the Appellee, William Hunt, in the above entitled cause.

Floyd A. Faxon, Harry F. Wiggins, 231 South La Salle Street, Dearborn 2306.

[fol. 31] I hereby consent to the withdrawal of Silas H. Strawn, Frank H. Towner and Guy A. Gladson as my attorneys in the above entitled cause and the substitution of Lloyd A. Faxon and Harry F. Wiggins as my attorneys in the above entitled cause.

William Hunt, Appellee.

Approved:

———, Judge.

[File endorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted]

Order Granting Leave for Substitution and Withdrawal of Attorneys—April 21, 1933

It is ordered by the court that leave be granted to Silas H. Strawn, Frank H. Towner and Guy A. Gladson to withdraw their appearance as counsel for appellee in this cause; and leave is hereby granted to Lloyd A. Faxon and Harry F. Wiggins to enter their appearance as counsel for said appellee.

[fol. 32] Appearance of counsel omitted in printing.

[fol. 33] Minute entry of argument and submission, Nov. 14, 1933, omitted in printing.

[fol. 34] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM AND SESSION, 1933

No. 4936

In the Matter of WILLIAM HUNT, Bankrupt

LOCAL LOAN COMPANY, a Corporation, Appellant,

vs.

WILLIAM HUNT, Appellee

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

OPINION—Filed November 17, 1933

Before Alschuler, Evans, and Sparks, Circuit Judges

Per CURIAM:

The only material difference in the questions presented in this case and those presented in No. 4899, In re Edward W. Skorez, Bankrupt, Trustees System Reinco Company v. Edwards W. Skorez, decided by this court on June 24, 1933, is that in the case at bar, bankrupt had already secured his discharge, while in the Skorez case, bankrupt's petition for a discharge was pending. The distinction we think can make no difference, and the order of the District Court in the instant case is affirmed on the authority of the decision in the Skorez case and the cases therein cited.

[fol. 35] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

4936

In the Matter of WILLIAM HUNT, Bankrupt

LOCAL LOAN COMPANY, a Corporation,

vs.

WILLIAM HUNT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

JUDGMENT—Nov. 17 1933

This cause came on to be heard on the transcript of the record from the District Court of the United States for the

Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

[fol. 36] In United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted]

Notice of Motion for Stay of Mandate—Filed Dec. 7, 1933

To Lloyd A. Faxon, Harry F. Wiggin, 1026 No. 231 S. La Salle Street, Chicago, Illinois, Counsel for Appellee:

You are Hereby Notified that we shall on Thursday, December 7, 1933, at the hour of 9:30 o'clock A. M., or as soon thereafter as court shall convene, appear before the Circuit Court of Appeals for the Seventh Circuit and ask that the issuance of the mandate in the above-entitled cause be stayed until appellant's time for filing a petition for certiorari in the Supreme Court of the United States to review the judgment herein has expired, or, if appellant within such time shall file such a petition in the Supreme Court of the United States, then until the case is finally disposed of in said Supreme Court.

Frederic Burnham, David F. Rosenthal, Orville W. Lee, Counsel for Appellant.

Received a copy of the above and foregoing notice this 6th day of December, 1933.

Lloyd A. Faxon, Harry F. Wiggins, Counsel for Appellee.

[File endorsement omitted.]

[fol. 37] In United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted]

Motion for Stay of Mandate—Filed Dec. 7, 1933

Now comes the appellant herein, by its counsel, Frederic Burnham, David F. Rosenthal and Orville W. Lee, and

moves the court that the issuance of the mandate in the above-entitled cause be stayed until appellant's time for filing a petition for certiorari in the Supreme Court of the United States to review the judgment herein has expired, or, if appellant within such time shall file such a petition in the Supreme Court of the United States, then until the case is finally disposed of in said Supreme Court.

Frederic Burnham, David F. Rosenthal, Orville W. Lee, Counsel for Appellant.

[File endorsement omitted.]

[fol. 38] In United States Circuit Court of Appeals

[Title omitted]

Order Staying Mandate—Dec. 7, 1933

Now this day comes counsel for appellant and presents a motion for a stay of the mandate of this court, pending a petition to the Supreme Court of the United States for a writ of certiorari.

On consideration whereof: It is now here ordered that the mandate in this cause be, and the same is hereby stayed until the further order of this court.

It is further ordered that counsel for appellant proceed with diligence and promptly file the petition for a writ of certiorari in the Supreme Court of the United States and, upon the filing of said petition file in this court proof of the filing of said petition in said court.

[fol. 39] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 40] Supreme Court of the United States

Order Allowing Certiorari—Filed March 12, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which ac-

companied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,386. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 783. Local Loan Company, petitioner, vs. William Hunt. Petition for a writ of certiorari and exhibit thereto. Filed February 12, 1934. File No. 783, O. T., 1933.

FILE COPY

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CHARLES ELMORE
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 783

LOCAL LOAN COMPANY, A CORPORATION,
Petitioner and Appellant Below,

vs.

WILLIAM HUNT,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

FREDERIC BURNHAM,
DAVID F. ROSENTHAL,
ORVILLE W. LEE,
RICHARD MAYER,
Counsel for Petitioner

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. .....

LOCAL LOAN COMPANY, A CORPORATION,
Petitioner and Appellant Below,

vs.

WILLIAM HUNT,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, affirming an order of the District Court for the Northern District of Illinois, Eastern Division. The District Court, sitting in bankruptcy, upon the petition of William Hunt, a discharged bankrupt, summarily and permanently stayed proceedings begun by petitioner in a State Court, after Hunt's discharge, to enforce as against wages earned after his adjudication, the lien of a wage assignment given by him prior to his adjudication.

Questions Presented.

1. Does a Federal District Court sitting in bankruptcy have the power to adjudicate the effect of its own discharge upon a particular obligation of a bankrupt?

2. Does a Federal Court sitting in bankruptcy have power, after a bankrupt has been discharged, to enjoin proceedings in a state court, brought after the discharge, to enforce a claim against the bankrupt which the bankrupt alleges was barred by his discharge?

3. Is a Federal Court sitting in bankruptcy justified in disregarding the decisions of the court of last resort of the local jurisdiction, which hold that an assignment of wages to be earned under an employment existing at the time of the filing of a petition in bankruptcy creates a lien which survives discharge and enables the assignee to collect the wages earned after adjudication?

Petitioner believes that each of these questions should be answered in the negative. The Circuit Court of Appeals answered each of them in the affirmative, basing its decision, petitioner urges, upon a misconception of the fundamental rules which separate the powers and functions of bankruptcy courts from those of courts of general jurisdiction.

The importance and necessity of maintaining harmony between the federal and state judicial systems by clearly defining the jurisdiction of each and correlating their functions in matters of concurrent jurisdiction is obvious. Inasmuch as this case presents a new field of jurisdictional conflict between the two systems, capable of causing much confusion and embarrassment, it is believed deserving of review by this court.

STATUTES INVOLVED.

Section 265 of the Judicial Code (March 3, 1911, Ch. 231, Sec. 265, 36 Stat. 1162; 28 U. S. C. A. 379):

> "The writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Section 2 (15) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 2 (15), 30 Stat. 545; 11 U. S. C. A. 11):

> "The Courts of bankruptcy * * * are invested * * * with such jurisdiction at law or in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings to * * * make such order, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title."

Section 11 (a) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 11 (a), 30 Stat. 549; 11 U. S. C. A. 29):

> "A suit which is founded upon a claim from which a discharge would be a release and which is pending against a person at the time of a petition filed against him shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankruptcy, such action may be further stayed until twelve months after the date of such adjudication or if within that time such person applies for a discharge, then until the question of such discharge is determined."

Section 67 (d) of the Bankruptcy Act (July 1, 1898, Ch. 541, Sec. 67 (d), 30 Stat. 564; 11 U. S. C. A. 107):

> "Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title and for a present consideration * * * shall to the extent of such consideration only not be effected by anything herein."

STATEMENT.

On September 17, 1930, William Hunt, the respondent herein, was in the employ of the Grand Trunk Western Railroad Company. On that day he borrowed $300 from the petitioner herein, the Local Loan Company, and executed an assignment of his wages earned and to be earned by him with said employer, as security for said loan. (R. 9.)

On March 3, 1931, Hunt filed a voluntary petition in bankruptcy in the United States District Court for the Northern District of Illinois, Eastern Division, in which he duly scheduled the debt of $300, and on March 6, 1931, Hunt was adjudicated a bankrupt. On March 10, 1932, he procured his discharge. (R. 9.)

On October 17, 1932, petitioner served notice of the aforesaid wage assignment upon Hunt's employer and on October 18, 1932, filed suit against said employer in the Municipal Court of Chicago, Illinois, on said assignment (R. 3, 6). In this suit, the petitioner sought to recover for wages earned after the discharge.

On November 14, 1932, Hunt petitioned said District Court for an order permanently restraining petitioner from further prosecuting its said suit or its said claim under the wage assignment (R. 2). Petitioner answered setting up that the assignment was a valid lien not extinguished by a discharge in bankruptcy and contesting the jurisdiction of the District Court to issue the injunction (R. 5). A permanent restraining order was nevertheless issued (R. 8-10). Petitioner appealed to the Circuit Court of Appeals for the Seventh Circuit where the order of the District Court was sustained by judgment entered November 17, 1933 (R. 35).

Reasons for Allowance of Writ.

1. The Circuit Court of Appeals of this 7th Circuit has rendered a decision in this case in conflict with decisions of other Circuit Courts of Appeals on the following important question of federal law which has not been, but should be, settled by this court:

> Does a Federal District Court sitting in bankruptcy have the power to adjudicate the effect of its own discharge upon a particular obligation of a bankrupt?

The Circuit Court of Appeals in this case and in one other,[1] and the Ninth Circuit Court of Appeals[2] have held that a bankruptcy court has such power. The First, Second and Third Circuit Courts of Appeals[3] and all of the reported District Court decisions in which this question has been actually raised[4] have held squarely to the contrary.

2. The Circuit Court of Appeals has decided the following important question of federal law which has not been, but should be settled by this court:

> Does a Federal Court sitting in bankruptcy have power, after a bankrupt has been dis-

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[1] *In re Skorcz* (7th C. C. A. 1933), 67 Fed. (2d) 187.

[2] *Sims* v. *Jamison* (9th C. C. A. 1933), 67 Fed. (2d) 409.

[3] *In re Marshall Paper Co.* (1st C. C. A. 1900), 102 Fed. 872; *In re Havens* (2nd C. C. A. 1921), 272 Fed. 975; *Hellman* v. *Goldstone* (3rd C. C. A. 1921), 161 Fed. 913.

[4] *In re DeLauro* (D. C. Conn. 1932), 1 Fed. Supp. 678; *In re Madden* (D. C. N. J. 1919) 257 Fed. 581; *In re Weisberg* (D. C. Mich. 1918), 253 Fed. 833; *In re Lockwood* (D. C. N. Y. 1917), 240 Fed. 161; *In re Levitan* (D. C. N. J. 1915), 224 Fed. 241; *In re McCarty* (D. C. Ill. 1901), 111 Fed. 151; *In re Rosenthal* (D. C. N. Y. 1901), 108 Fed. 368; *In re Mussey* (D. C. Mass. 1900), 99 Fed. 71; *In re Black* (D. C. Cal. 1899), 97 Fed. 493; *In re Thomas* (D. C. Iowa, 1899), 92 Fed. 912.

charged, to enjoin proceedings in state courts, brought after the discharge, to enforce a claim against the bankrupt which the bankrupt alleges was barred by his discharge?

The only exception to the absolute prohibition contained in Section 265 of the Judicial Code against the issuance of injunctions by United States courts to stay proceedings in state courts is in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. There are no provisions of the Bankruptcy Act authorizing or permitting an invasion of the state court's jurisdiction in this case.[5]

3. The Circuit Court of Appeals has decided the following important federal question in a way probably in conflict with applicable decisions of this court, and with the decisions of two other Circuit Courts of Appeals, and with the weight of authority:

Is a Federal Court sitting in bankruptcy justified in disregarding the decisions of the court of last resort of the local jurisdiction, which hold that an assignment of wages to be earned under an employment existing at the time of the filing of a petition in bankruptcy creates a lien which survives discharge and enables the assignee to collect the wages earned after adjudication?

The Circuit Court of Appeals and the District Court held in this case and in one other[6] that a federal court, sitting in bankruptcy, can disregard such state decisions. No other Federal Court has passed upon the exact question, but this decision of the

[5] Pertinent Sections: Secs. 2(15) and 11(a) (July 1, 1898, Ch. 541, Sec. 11(a), 2(15); 11 U. S. C. A. 11, 29), discussed with applicable cases in brief, p. 12-15.

[6] *In re Skorcz* (7th C. C. A. 1933), 67 Fed. (2d) 187.

Circuit Court of Appeals of the Seventh Circuit is, we insist, in conflict with the decisions of this court which hold that Federal Courts in bankruptcy will follow the decisions of the court of last resort of the state with respect to the nature and extent of liens created by the law of that state.[7] The decision of the Court of Appeals herein also conflicts with decisions of the Circuit Courts of Appeals of the First and Ninth Circuits holding that the question as to whether a lien attaches to after-acquired property is to be determined by the local state law as expressed in the decisions of the local courts of last resort.[8]

It is respectfully submitted that the writ of certiorari herein prayed should issue for the reasons urged.

FREDERIC BURNHAM,
DAVID F. ROSENTHAL,
ORVILLE W. LEE,
RICHARD MAYER,
Chicago, Illinois,
By RICHARD MAYER,
Counsel for Petitioner.

---

[7] *Dooley* v. *Pease*, 186 U. S. 126 (1901); *Thompson* v. *Fairbanks*, 196 U. S. 516 (1905); *Humphrey* v. *Tatum*, 198 U. S. 91 (1905); *Hiscock* v. *Varick Bank of New York*, 206 U. S. 28 (1906); *Benedict* v. *Ratner*, 268 U. S. 353 (1925).

[8] *In re Robert Jenkins Corporation* (1st C. C. A. 1927) 17 Fed. (2d) 555; *In re Simpson* (9th C. C. A. 1929), 35 Fed. (2nd) 840; *Sims* v. *Jamison* (9th C. C. A. 1933), 67 Fed. (2d) 409.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinion of the Circuit Court of Appeals appears on page 34 of the record. It has not been reported. However, it is mainly a reaffirmance of the same court's opinion in *In re Skorcz,* reported in 67 Fed. (2d) 187.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered November 17, 1933 (R. 35). Jurisdiction is invoked under Section 240a of the Judicial Code as amended by Section 1 of the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938).

Questions Presented.

The questions presented are stated in the petition (*ante,* p. 2).

Statutes Involved.

Pertinent portions of the statutes involved are quoted in the petition (*ante,* pp. 3, 4).

Statement.

The statement of the case is in the petition (*ante,* p. 5).

ARGUMENT.

POINT I.

A FEDERAL COURT SITTING IN BANKRUPTCY HAS NO POWER TO ADJUDICATE THE EFFECT OF ITS OWN DISCHARGE.

Three Circuit Courts of Appeals have decided that it is not a function of the bankruptcy courts to pass upon the effect of a discharge in bankruptcy upon a particular obligation of bankrupt, that function being reserved to the court in which the bankrupt may plead his discharge in bar when sued upon the obligation.

In re Marshall Paper Co. (1st C. C. A. 1900) 102 Fed. 872.

Hellman v. *Goldstone* (3rd C. C. A. 1908), 161 Fed. 913.

In re Havens (2nd C. C. A. 1921), 272 Fed. 975.

Contra is *Sims* v. *Jamison* (9th C. C. A. 1933), 67 Fed. (2d) 409, which holds that both courts of general jurisdiction and bankruptcy courts have jurisdiction in the matter. All of the District Court cases found in which the point has been squarely raised support the rule of the Circuit Courts of Appeals in the First, Second and Third Circuits.[1]

[1] *In re DeLauro* (D. C. Conn. 1932), 1 Fed. Supp. 678; *In re Madden* (D. C. N. J. 1919), 257 Fed. 581; *In re Weisberg* (D. C. Mich. 1918) 253 Fed. 833; *In re Lockwood* (D. C. N. Y. 1917), 240 Fed. 161; *In re Levitan* (D. C. N. J. 1915), 224 Fed. 241; *In re McCarty* (D. C. Ill. 1901) 111 Fed. 151; *In re Rosenthal* (D. C. N. Y. 1901), 108 Fed. 368; *In re Mussey* (D. C. Mass. 1900), 99 Fed. 71; *In re Black* (D. C. Cal. 1899), 97 Fed. 493; *In re Thomas* (D. C. Iowa, 1899), 92 Fed. 912.

The District Court's permanent injunction ousted the state court's jurisdiction to adjudicate the effect of the discharge in this case, and the Circuit Court of Appeals' affirmance thereof extends the conflict between the cases noted. The question has never been passed upon by this court, and in view of its importance and of the existing conflict between the Circuit Courts of Appeals, it is submitted that it should now be settled by this court.

Point II.

A FEDERAL COURT SITTING IN BANKRUPTCY HAS NO POWER, AFTER DISCHARGE OF A BANKRUPT TO OUST A STATE COURT BY INJUNCTION OF JURISDICTION TO DETERMINE THE EFFECT OF SUCH DISCHARGE.

Section 265 *of the Judicial Code*[1] provides:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This section forbids interference by one court when the jurisdiction of another court of concurrent authority has attached, and is based upon the necessity of preventing unseemly conflict between state and federal courts. It is strictly enforced.

Peck v. *Jeness,* 48 U. S. (7 How.) 612 (1849).

Metcalf v. *Barker,* 187 U. S. 165 (1902).

Hull v. *Burr,* 234 U. S. 712 (1914).

Phelps v. *Mutual Reserve Fund Life Assn.,* (6th C. C. A. 1901) 112 Fed. 453 (aff'd. 190 U. S. 147).

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[1] Mar. 3, 1911, Ch. 231, Sec. 265, 36 Stat. 1162; 28 U. S. C. A. 379.

The *Phelps* case holds that the only permissible relaxation of the strict rule of Sec. 265 is that a federal court may enjoin a state court when necessary to protect its own prior possession of the controversy or enforce its own judgment.

In this case the state court, not the bankruptcy court, had prior possession of the controversy over Hunt's wages earned subsequent to his adjudication. Moreover, we have shown that the bankruptcy courts grant discharges, but do not adjudicate their effect, so that the injunction was not warranted on the ground of enforcing a prior judgment of the District Court.

The sole remaining question is: Was the injunction authorized by any provision of the Bankruptcy Act?

The "laws relating to bankruptcy" mentioned in Section 265 are now Sections 2 (15) and 11 (a) of the Bankruptcy Act. *Hull* v. *Burr,* 234 U. S. 712 (1914).

Section 2 (15) of the Bankruptcy Act[1] provides:

> "The courts of bankruptcy * * * are invested * * * with such jurisdiction at law or in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings to * * * make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title."

By the above section courts of bankruptcy are not invested with general equitable jurisdiction, but only

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[1] July 1, 1898, Ch. 541, Sec. 2(15), 30 Stat. 545; 11 U. S. C. A. 11.

such equitable powers as are necessary to carry out their statutory jurisdiction in bankruptcy matters.

Bardes v. *Hawarden Bank,* 178 U. S. 524 (1900).

In re Judith Gap Commercial Co. (9th C. C. A., 1925), 5 Fed. (2d) 307.

This injunction was outside the bankruptcy court's statutory jurisdiction. Its main object, adjudicating the effect of a discharge, was not a bankruptcy function (Argument, Point I). There are other reasons why the injunction did not perform a bankruptcy function.

Bankruptcy courts have no jurisdiction to adjudicate the rights of one who claims, adversely to the bankrupt, property not in the court's possession, even though it is part of the bankrupt's estate. Such an adverse claim must be litigated in a plenary proceeding in a court of general jurisdiction.

Bardes v. *Hawarden Bank,* 178 U. S. 524 (1900).

Louisville Trust Co. v. *Cominger,* 184 U. S. 18 (1902).

Harris v. *First National Bank,* 216 U. S. 382 (1910).

Galbraith v. *Valley,* 256 U. S. 46 (1921).

Harrison v. *Chamberlin,* 271 U. S. 191 (1926).

An assignee claiming wages earned subsequent to adjudication is an adverse claimant within the foregoing rule.

Progressive Building & Loan Company, Inc. v. *Hall* (4th C. C. A. 1914), 220 Fed. 45.

Copeland v. *Martin* (5th C. C. A. 1910), 182 Fed. 805.

Moreover, the wages in this case were earned after adjudication and therefore not even part of Hunt's estate in bankruptcy. Bankruptcy courts have no power to entertain litigation between the bankrupt and a third party with respect to property not a part of the bankruptcy estate. That is true where the property has been set aside to the bankrupt as an exemption,

Duffy v. *Tegeler* (8th C. C. A. 1927), 19 Fed. (2d) 305.

B. F. Roden Grocery Co. v. *Bacon* (5th C. C. A. 1904), 133 Fed. 515.

and where the property is held by the bankrupt wrongfully, without title,

In re Amy (2nd C. C. A. 1920), 263 Fed. 8.

Nor can the order of the District Court be sustained under Section 11 (a) of the Bankruptcy Act[1] which provides:

> "A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined."

A stay under this section cannot delay the prosecution of a suit longer than the determination of the application for a discharge.

In re Byrne (2nd C. C. A., 1924), 296 Fed. 98.

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[1] July 1, 1898, Ch. 541, Sec. 11(a), 30 Stat. 549; 11 U. S. C. A. 29.

In re Federal Biscuit Co. (2nd C. C. A. 1914), 214 Fed. 221.

and several District Court decisions.[1]

The temporary stay orders authorized by Section 11 (a) merely suspend the proceedings in the state court until the question of discharge has been adjudicated. They do not oust the state court's jurisdiction. Section 11 (a) indicates a legislative intent that courts of bankruptcy are not to charge themselves with perpetual custody of bankrupts, but that, having granted discharges to them, they are to remit them to the protection of courts of general jurisdiction.

This conclusion is strengthened by the construction which the courts have given to Section 9 of the Bankruptcy Act,[2] which invests courts of bankruptcy with power to protect bankrupts from arrest under civil process. It is held that the protection extended to bankrupts under that section expires with the granting or refusal of a discharge.

In re DeLauro (D. C. Conn. 1932), 1 Fed. Supp. 678.

In re Lockwood (D. C. N. Y. 1917), 240 Fed. 161.

The conclusion is that since no power in the District Court to issue the injunction in this case is expressed in or can be implied from any provisions of the Bankruptcy Act, the injunction must be one

[1] *In re Madden* (D. C. N. J. 1919), 257 Fed. 581; *In re Weisberg* (D. C. Mich. 1918), 253 Fed. 833; *In re Levitan* (D. C. N. J. 1915), 224 Fed. 241; *In re Lockwood* (D. C. N. Y. 1917), 240 Fed. 161; *In re Flanders* (D. C. Vt. 1903), 121 Fed. 936; *In re Rosenthal* (D. C. N. Y. 1901), 108 Fed. 368.

[2] July 1, 1898, Ch. 541, Sec. 9, 30 Stat. 549, 11 U. S. C. A. 27.

which comes directly within the prohibitive language of Section 265 of the Judicial Code.

This question has never been passed upon by this court, and, we submit, is of such importance that it should be.

Point III.

A FEDERAL COURT SITTING IN BANKRUPTCY MAY NOT DISREGARD STATE COURT DECISIONS ADJUDICATING LIEN RIGHTS.

Section 67 (d) of the Bankruptcy Act[1] provides:

> "Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by anything herein."

The liens referred to in the above section are such as are created by the laws of the several states. The federal courts follow the decisions of the highest courts of the several states in determining the force and effect of liens created under state law.

Dooley v. *Pease*, 180 U. S. 120 (1901).

Thompson v. *Fairbanks*, 196 U. S. 516 (1905).

Humphrey v. *Tatum*, 198 U. S. 91 (1905).

Hiscock v. *Varick Bank of New York.*, 206 U. S. 28 (1906).

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[1] July 1, 1898, Ch. 541, Sec. 67(d), 30 Stat. 564; 11 U. S. C. A. 107.

Benedict v. *Ratner,* 268 U. S. 353 (1925).

In re Robert Jenkins Corporation (1st C. C. A. 1927) 17 Fed. (2d) 555.

In re Simpson (9th C. C. A. 1929), 35 Fed. (2d) 840.

Sims v. *Jamison* (9th C. C. A. 1933), 67 Fed. (2d) 409.[2]

The Supreme Court of Illinois holds that in Illinois an assignment of future wages creates such a lien as gives the assignee a vested property right from the date of the assignment, and that such a lien is within the terms of Section 67 (d) of the Bankruptcy Act, and is therefore not invalidated by the assignor's discharge in bankruptcy.

Mallin v. *Wenham,* 209 Ill. 252, 70 N. E. 564.

Monarch Discount Co. v. *C. & O. Railway Co.,* 285 Ill. 233, 120 N. E. 743.

Such being the law in Illinois, the District Court should have applied it in this case, and held that the bankrupt's discharge was not a bar to petitioner's

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[2] All of the above cases, except *Dooley* v. *Pease,* are bankruptcy cases, and all of those except the *Hiscock* case involve the validity of a lien given upon property to be acquired in the future. Judge Sparks, in *In re Skorcz,* (7th C. C. A. 1933), 67 Fed. (2d) 187), recognized that his decision was contrary to the Illinois rule, but relied upon *Swift* v. *Tyson,* 41 U. S. (16 Peters) 1, 17 and *Guffey* v. *Smith,* 237 U. S. 101, 114, where is was held that in common law actions the Federal courts are not bound by local decisions on points of general law. In view of the cases cited above it cannot be supposed that this court has ever considered that the doctrine of *Swift* v. *Tyson* applies in a bankruptcy case where the nature and extent of a lien are in question.

suit upon the wage assignment in the Municipal Court of Chicago.[1]

If the decision in this case is allowed to stand it means that henceforth all liens, of whatever kind or amount, will be subject to modification or abrogation in bankruptcy whenever the bankruptcy courts do not approve the soundness of the state law by which they are created. The change so wrought in the construction of the Bankruptcy Act will seriously affect the stability of property rights founded upon state law.

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[1] We have in mind, of course, that the Federal courts in the following cases involving the effect of the assignor's discharge in bankruptcy upon a wage assignment, have held that such assignment does not create a lien upon future wages until the wages are earned: *In re West* (D. C. Or., 1904), 128 Fed. 205; *In re Home Discount Co.* (D. C. Ala. 1906) 147 Fed. 538; *In re Ludeke* (D. C. N. Y. 1909), 171 Fed. 292; *In re Lineberry* (D. C. Ala. 1910), 183 Fed. 338; *In re Fellows* (D. C. Okla. 1930), 43 Fed. (2d) 122; *In re Vorhees* (D. C. Ohio, 1930), 41 Fed. (2d) 81; *In re Potts* (D. C. Ida. 1931), 54 Fed. (2d) 144; *Seaboard Small Loan Corp.* v. *Ottinger* (4th C. C. A. 1931), 50 Fed. (2d) 856.

Several of these cases criticize the Illinois doctrine. None of them, however, arose in a jurisdiction where the Illinois doctrine prevails, and consequently none of them pass upon the question of whether the federal courts are bound to follow the local rule in jurisdictions where it *is* the law that a wage assignment gives the assignee a vested property right in the assignor's unearned wages.

Of interest is "Wage Assignments in Illinois" by A. Fortas, in Yale Law Journal, Vol. XLII No. 4 (February, 1933), pages 527-548, where the conflicting cases are noted, and Professor Williston (Contracts, 1925, Sec. 414) and Re-Statement of Contracts (A. L. I. 1932), Sec. 154, are cited to the effect that the Illinois rule is technically sound. The decisions contra are characterized as variations introduced by the supposed "hardship of the case." And to the same effect is "Discharge in Bankruptcy and the Assignment of Future Wages," by F. M. Merrifield, in Univ. of Chicago Law Review, Vol. I, No. 3 (January, 1934), pages 488-490.

Conclusion.

Because this case involves questions of conflict of jurisdiction between the federal courts and the courts of a state, questions as to the extent of the statutory jurisdiction of bankruptcy courts and questions as to the paramount right of a state to control the nature and extent of property rights within its own borders, petitioners urge that its importance is such as to warrant the writ of certiorari above prayed.

Respectfully submitted,

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FILED
MAR 19 1934
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 783

LOCAL LOAN COMPANY, A CORPORATION,
Petitioner and Appellant Below,

vs.

WILLIAM HUNT,
Respondent and Appellee Below.

BRIEF OF PETITIONER.

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Petitioner and Appellant Below,

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Respondent and Appellee Below.

BRIEF OF PETITIONER.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals appears on page 34 of the record and is reported in 67 Fed. (2d) 998. It is mainly a reaffirmance of the same court's opinion in *In re Skorcz,* reported in 67 Fed. (2d) 187. No opinion was rendered by the District Court.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 17, 1933 (R. 35). Certiorari was granted March 12, 1934 under Section 240a of the Judicial Code as amended by Section 1 of the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938).

Statement of Case.

On September 17, 1930, William Hunt, the respondent herein, was in the employ of the Grand Trunk Western Railroad Company. On that day he borrowed $300 from the petitioner herein, the Local Loan Company, and executed an assignment of his wages earned and to be earned by him with said employer, as security for said loan. (R. 9.)

On March 3, 1931, Hunt filed a voluntary petition in bankruptcy in the United States District Court for the Northern District of Illinois, Eastern Division, in which he duly scheduled the debt of $300, and on March 6, 1931, Hunt was adjudicated a bankrupt. On March 10, 1932, he procured his discharge. (R. 9.)

On October 17, 1932, petitioner served notice of the aforesaid wage assignment upon Hunt's employer and on October 18, 1932, filed suit against said employer in the Municipal Court of Chicago, Illinois, on said assignment (R. 3, 6). In that suit the petitioner sought to recover wages earned by Hunt after his adjudication as a bankrupt.

On November 14, 1932, Hunt petitioned said District Court for an order permanently restraining petitioner from further prosecuting its said suit or its said claim under the wage assignment (R. 2). Petitioner answered setting up that the assignment was a valid lien not extinguished by a discharge in bankruptcy and contesting the jurisdiction of the District Court to issue the injunction (R. 5). A permanent restraining order was nevertheless issued (R. 8-10). Petitioner appealed to the Circuit Court of Appeals for the Seventh Circuit where the order of the District Court was sustained by judgment entered November 17, 1933 (R. 35).

Questions Presented.

1. Is it within the jurisdiction of a bankruptcy court, after it has granted a discharge in bankruptcy, to adjudicate the effect of such discharge upon a claim or demand made against the bankrupt by a person not a party to the bankruptcy proceedings? Petitioner claims it is not, that function being reserved to any court of general jurisdiction in which suit may be brought against the discharged bankrupt upon such claim or demand, in which court the discharge may be pleaded in bar to the action.

2. Has a bankruptcy court the right to oust, by permanent injunction, the prior possession by a court of general jurisdiction of a suit brought against a bankrupt, after discharge, upon an obligation from which the bankrupt claims to have been freed by his discharge? Petitioner asserts that such right is denied the bankruptcy courts by Section 265 of the Judicial Code, and is otherwise outside the jurisdiction of such courts.

3. May a bankruptcy court disregard decisions of the highest court of a state in determining whether in that state an assignment of future wages, or other encumbrance of property not *in esse*, creates such a lien as is preserved from discharge in bankruptcy by Section 67 (d) of the Bankruptcy Act? Petitioner believes that in such matters the bankruptcy courts are bound to follow the decisions of the highest courts of the several states.

The above are the three principal questions involved in this case, all of which were decided adversely to the petitioner and erroneously, as petitioner believes, by the District Court and by the Circuit Court of Appeals.

STATUTES INVOLVED.

Section 265 of the Judicial Code (March 3, 1911, c. 231, § 265, 36 Stat. 1162; 28 USCA 379):

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Section 2 (15) of the Bankruptcy Act (July 1, 1898, c. 541, § 2 (15), 30 Stat. 545; 11 USCA 11):

> "The courts of bankruptcy * * * are invested * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings to * * * make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

Section 11 (a) of the Bankruptcy Act (July 1, 1898, c. 541, § 11 (a), 30 Stat. 549; 11 USCA 29):

> "A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined."

Section 67 (d) of the Bankruptcy Act (July 1, 1898, c. 541 § 67 (d), 30 Stat. 564; June 25, 1910, c. 412, § 12, 36 Stat. 842; 11 USCA 107):

> "Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title, and for a present consideration * * * shall, to the extent of such present consideration only, not be affected by anything herein."

Summary of Argument.

Point I.—Bankruptcy courts are courts of limited statutory jurisdiction, exercising only such powers as are granted them in the Bankruptcy Act. They grant or refuse discharges in bankruptcy but it is not their function to pass upon the effect of a discharge, when granted, upon a particular obligation of a bankrupt. That function is reserved to any court of general jurisdiction in which a bankrupt may be sued and where he may plead his discharge in bankruptcy as a bar to the action. In this case petitioner was permanently enjoined by a bankruptcy court from prosecuting a claim against respondent, a discharged bankrupt, in a state court of general jurisdiction. The injunction constituted a final adjudication by the bankruptcy court of the effect of its own discharge upon petitioner's claim and for that reason was beyond the jurisdiction of the bankruptcy court.

Point II.—Courts of the United States are forbidden by Section 265 of the Judicial Code from enjoining proceedings in any state court except when authorized to do so by the Bankruptcy Act. In this case the state court had prior possession of the controversy between petitioner and respondent.

Neither expressly, nor by permissible implication, does the Bankruptcy Act authorize a bankruptcy court to permanently enjoin suits brought against a bankrupt in a state court.

Section 2 (15) of the Act invests bankruptcy courts with such equitable powers as are necessary to carry out their statutory jurisdiction, and no more. In this case the bankruptcy court exceeded its statutory jurisdiction not only in adjudicating the effect

of its own discharge, but in adjudicating the right of petitioner, claiming adversely to the bankrupt, to property not in the bankruptcy court's possession, and in entertaining litigation with respect to the title to property not a part of the bankrupt's estate. Its use of the writ was, therefore, in excess of the authority vested in it by Section 2 (15).

Section 11 (a) of the Act, the only other relevant provision, authorizes bankruptcy courts to stay suits pending against a bankrupt only until the bankrupt's application for discharge has been acted upon. This Section not only fails to authorize any permanent stay of such proceedings after discharge but manifests a contrary intention that after discharge the authority of the courts of general jurisdiction shall be restored.

Point III.—Not only had the bankruptcy court no jurisdiction to adjudicate the effect of respondent's discharge upon petitioner's claim, nor any right to employ the writ of injunction to oust the prior jurisdiction of the state court over that question, but in passing upon the question it erroneously failed to follow, as it should have done, the law in Illinois that an assignment of future wages creates a present lien against such wages in favor of the assignee. The Bankruptcy Act preserves from the operation of a discharge in bankruptcy all liens created by state law and in determining the nature and effect of such liens bankruptcy courts should follow the decisions of the highest courts of the several states.

ARGUMENT.

Point I.

It Is Not Within the Jurisdiction of a Bankruptcy Court, After Granting a Discharge in Bankruptcy, to Adjudicate the Effect of Such Discharge Upon a Claim or Demand Made Against the Bankrupt by a Person Not a Party to the Bankruptcy Proceedings.

Three Circuit Courts of Appeals have decided that it is not a function of the bankruptcy courts to pass upon the effect of a discharge in bankruptcy upon a particular obligation of a bankrupt, that function being reserved to the courts of general jurisdiction, in which the bankrupt may plead his discharge in bar when sued upon the obligation.

In re Marshall Paper Co. (1st C. C. A. 1900) 102 Fed. 872, 874.

Hellman v. *Goldstone* (3rd C. C. A. 1908), 161 Fed. 913.

In re Havens (2nd C. C. A. 1921), 272 Fed. 975, 976.

Contra is *Sims* v. *Jamison* (9th C. C. A. 1933), 67 Fed. (2d) 409, which holds that both courts of general jurisdiction and bankruptcy courts have jurisdiction in the matter. All of the District Court cases found in which the point has been squarely raised support the rule of the Circuit Courts of Appeals in the First, Second and Third Circuits.[1]

[1] *In re DeLauro* (D. C. Conn. 1932), 1 Fed. Supp. 678; *In re Madden* (D. C. N. J. 1919), 257 Fed. 581; *In re Weisberg* (D. C. Mich. 1918) 253 Fed. 833; *In re Lockwood* (D. C. N. Y. 1917), 240 Fed. 161; *In re Levitan* (D. C. N. J. 1915), 224 Fed. 241; *In re McCarty* (D. C. Ill. 1901) 111 Fed. 151; *In re Rosenthal* (D. C. N. Y. 1901), 108 Fed. 368; *In re Mussey* (D. C. Mass. 1900), 99 Fed. 71; *In re Black* (D. C. Cal. 1899), 97 Fed. 493.

We submit that the weight of reason as well as the weight of authority indicates that bankruptcy courts should not undertake to pass upon the effect of their own discharges. The necessity for such adjudications does not arise until a discharged bankrupt is sued or threatened with suit, in a court of general jurisdiction, upon some obligation incurred by him, or lien given by him, prior to his bankruptcy. Such court of general jurisdiction has the power to pass upon the effect of the discharge at that time. If the bankruptcy courts were to assume a concurrent power to decide the same issue whenever it might arise, such power could only be exercised summarily, as it was in this case, by injunction. Manifold objections to that form of procedure at once suggest themselves.

First. The effect of the discharge would often be only one of several issues arising between the parties. Since bankruptcy courts are neither equipped nor authorized to dispose of all of the issues which might be involved, the result would often be to delay the disposition of an entire cause in the court of general jurisdiction in which it had been or might be commenced, pending the final decision of a single issue in a bankruptcy court.

Second. It would result in the employment of the writ of injunction in a large class of cases involving no inadequacy of legal remedy. It must be assumed that the bankrupt's discharge would be accorded full effect if he should plead it in bar to whatever action might be brought against him in a court of general jurisdiction. Any possible failure of such court through error to accord proper effect to the discharge would be subject to correction through the usual channels of appeal.

Third. Such procedure would result in a useless duplication of legal machinery. Since the power and duty of enforcing discharges in bankruptcy is undoubtedly possessed by every court of general jurisdiction wherein the question might arise, there is no necessity for investing bankruptcy courts with the same power. In their special field of adjudicating the status of bankrupts and administering their estates for their creditors, bankruptcy courts perform an exclusive and specialized function, whereas in undertaking to exercise at least partial jurisdiction over every case in which the status of a bankrupt, once declared, might thereafter become material, such courts would be merely assuming cumulative jurisdiction over a matter of general law.

Fourth. Such procedure, if it became at all common, would greatly burden the bankruptcy courts, interfering with the expeditious dispatch of strictly bankruptcy matters. No bankruptcy case could ever be considered entirely closed as long as the bankrupt might at any time call upon the court to adjudicate the effect of his discharge whenever such question might arise between him and someone asserting a claim against him.

Further undesirable results would follow in cases where the controversy over the effect of the discharge had come into the possession of some court of general jurisdiction before the authority of the bankruptcy court was invoked. The conflict of jurisdictions which would arise in every such case is considered in Point II.

In this case, through a supposed jurisdiction summarily invoked, the District Court, sitting in bankruptcy, undertook to pass upon the effect of respondent Hunt's discharge in bankruptcy upon the

claim brought against him by petitioner, based upon an assignment of future wages given to petitioner by Hunt prior to his bankruptcy. We submit that upon the authority of the cases cited and for the various reasons above mentioned, the Circuit Court of Appeals should have held that in fact the District Court had no jurisdiction to pass upon such a question and should have vacated that court's injunction order.

Point II.

A Bankruptcy Court Has No Right to Oust, by Permanent Injunction, the Prior Possession by a Court of General Jurisdiction of a Suit Brought Against a Bankrupt After Discharge Upon an Obligation from Which the Bankrupt Claims to Have Been Freed by His Discharge.

Section 265 *of the Judicial Code*[1] provides:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This section forbids interference by one court when the jurisdiction of another court of concurrent authority has attached, and is based upon the necessity of preventing unseemly conflict between state and federal courts. It is strictly enforced.

Peck v. *Jeness,* 48 U. S. (7 How.) 612, 624 (1849).

Metcalf v. *Barker,* 187 U. S. 165, 175 (1902).

Hull v. *Burr,* 234 U. S. 712, 723 (1914).

Phelps v. *Mutual Reserve Fund Life Assn.,* (6th C. C. A. 1901) 112 Fed. 453, 463-470 (aff'd. 190 U. S. 147).

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[1] Mar. 3, 1911, c. 231, § 265, 36 Stat. 1162; 28 USCA 379.

The *Phelps* case holds that the only permissible relaxation of the strict rule of Section 265 is that a federal court may enjoin a state court when necessary to protect its own prior possession of a controversy or enforce its own judgment.

In this case the state court, not the bankruptcy court, had prior possession of the controversy over Hunt's wages earned subsequent to his adjudication. There was no controversy until petitioner asserted, after Hunt's discharge, its claim against such wages in the hands of his employer. Petitioner was in no sense a party to any proceedings theretofore had in the bankruptcy court. Therefore it cannot reasonably be claimed in this case that the bankruptcy court had a prior possession of the controversy, to protect which it might enjoin the proceedings begun by petitioner in the state court.

Similarly, it cannot be claimed that the bankruptcy court, in issuing the injunction in this case, acted to enforce its own prior judgment. Since the controversy between petitioner had not theretofore arisen, it could not possibly have been adjudicated by any judgment or order theretofore made by the bankruptcy court.

Because the injunction issued in this case does not come within the scope of any implied exception to Section 265 of the Judicial Code, the sole remaining question is whether it comes within the express exception to that section by reason of being authorized by any provision of the Bankruptcy Act. The only two provisions of the Act which are relevant are Sections 2(15) and 11(a), and it was stated in *Hull* v. *Burr*, 234 U. S. 712, 723 (1914), that those sections are now the "laws relating to bankruptcy" to which Section 265 of the Judicial Code refers.

Section 2(15) of the Bankruptcy Act[1] provides:

> "The courts of bankruptcy * * * are invested * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings to * * * make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

By the above section courts of bankruptcy are not invested with general equitable jurisdiction, but only such equitable powers as are necessary to carry out their statutory jurisdiction in bankruptcy matters.

Bardes v. *Hawarden Bank*, 178 U. S. 524, 535 (1900).

In re Judith Gap Commercial Co. (9th C. C. A., 1925), 5 Fed. (2d) 307, 309.

Since Section 2(15) does not of itself invest bankruptcy courts with any substantive jurisdiction, but only with procedural power to effectively exercise such jurisdiction as it otherwise possesses, it begs the question to point to that section alone as authority for the issuance of the injunction in this case. Other provisions of the Act must be consulted to determine whether the substantive result which the injunction achieved was a thing which bankruptcy courts are authorized to do.

We have heretofore asserted that the principal object of the injunction in this case, to adjudicate the effect of a bankrupt's discharge, is not a function which bankruptcy courts are authorized to perform (Argument, Point I). There are other reasons why the injunction did not perform a bankruptcy function.

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[1] July 1, 1898, c. 541, § 2 (15), 30 Stat. 545; 11 USCA 11.

Bankruptcy courts have no jurisdiction to adjudicate the rights of one who claims, adversely to the bankrupt, property not in the court's possession, even though it is part of the bankrupt's estate. Such an adverse claim must be litigated in a plenary proceeding in a court of general jurisdiction.

Bardes v. *Hawarden Bank,* 178 U. S. 524, 532 (1900).

Louisville Trust Co. v. *Comingor,* 184 U. S. 18, 25 (1902).

Harris v. *First National Bank,* 216 U. S. 382 (1910).

Galbraith v. *Valley,* 256 U. S. 46 (1921).

Harrison v. *Chamberlin,* 271 U. S. 191, 193 (1926).

An assignee claiming wages earned subsequent to adjudication is an adverse claimant within the foregoing rule.

Progressive Building & Loan Company, Inc. v. *Hall* (4th C. C. A. 1914), 220 Fed. 45, 46, 48.

Copeland v. *Martin* (5th C. C. A. 1910), 182 Fed. 805, 808.

Moreover, the wages in this case were earned after adjudication and therefore were not even part of Hunt's estate in bankruptcy. Bankruptcy courts have no power to entertain or enjoin litigation between a bankrupt and a third party with respect to property not a part of the bankruptcy estate. That is true where the property has been set aside to the bankrupt as an exemption,

Duffy v. *Tegeler* (8th C. C. A. 1927), 19 Fed. (2d) 305, 308.

B. F. Roden Grocery Co. v. *Bacon* (5th C. C. A. 1904), 133 Fed. 515.

and where the property is held by the bankrupt wrongfully, without title,

In re Amy (2nd C. C. A. 1920), 263 Fed. 8, 11.

A bankruptcy court's lack of jurisdiction upon both of the above grounds was recently recognized in a wage assignment case by the District Court, Eastern District of New York, in *In re Rashbaum*, 4 Fed. Supp. 724.

Having thus arrived at the conclusion that the entire subject matter affected by the bankruptcy court's injunction in this case was outside that court's jurisdiction for several reasons, it follows irresistibly that Section 2(15) of the Act cannot be invoked as authority for the issuance of the injunction.

Nor can the order of the District Court be sustained under Section 11(a) of the Bankruptcy Act[1] which provides:

> "A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined."

A stay under this section cannot delay the prosecution of a suit longer than the determination of the application for a discharge.

In re Byrne (2nd C. C. A., 1924), 296 Fed. 98, 101.

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[1] July 1, 1898, c. 541, § 11(a), 30 Stat. 549; 11 USCA 29.

In re Federal Biscuit Co. (2nd C. C. A. 1914), 214 Fed. 221, 225.

and several District Court decisions.[2]

We submit that Section 11(a) fails to affirmatively authorize the issuance of a permanent injunction to stay proceedings against a bankrupt after discharge, as was done in this case. Such an injunction therefor comes squarely within the prohibition of Section 265 of the Judicial Code. We further submit that Section 11(a) bears out all that we have said concerning a bankruptcy court's complete lack of jurisdiction to issue such an injunction. The clear purpose of the section is not to oust any court of general jurisdiction of its possession of any suit against a bankrupt, nor to usurp the power of any such court to adjudicate the effect of such bankrupt's discharge, when and if granted, but merely to hold such suits in suspense long enough to allow a bankruptcy court to determine whether or not a discharge will be granted. Section 11(a) indicates a legislative intent that courts of bankruptcy are not to charge themselves with perpetual custody of bankrupts, but that having granted discharges to them, they are to remit them to the protection of courts of general jurisdiction, there to have and enjoy whatever advantages the law gives them by reason of having been discharged in bankruptcy.

This conclusion is strengthened by the construction which the courts have given to Section 9 of the

[2] *In re Madden* (D. C. N. J. 1919), 257 Fed. 581; *In re Weisberg* (D. C. Mich. 1918), 253 Fed. 833; *In re Lockwood* (D. C. N. Y. 1917), 240 Fed. 161; *In re Flanders* (D. C. Vt., 1903), 121 Fed. 936; *In re Rosenthal* (D. C. N. Y. 1901), 108 Fed. 368.

Bankruptcy Act,[1] which invests courts of bankruptcy with power to protect bankrupts from arrest under civil process. It is held that the protection extended to bankrupts under that section expires with the granting or refusal of a discharge.

In re DeLauro (D. C. Conn. 1932), 1 Fed. Supp. 678, 680.

In re Lockwood (D. C. N. Y. 1917), 240 Fed. 161.

The conclusion is that since no power in the District Court to issue the injunction in this case is expressed in or can be implied from any provisions of the Bankruptcy Act, the injunction must be one which comes directly within the prohibitive language of Section 265 of the Judicial Code.

Moreover, such conclusion is the only one compatible with the fundamental principles of comity upon which Section 265 is based. In *Phelps* v. *Mutual Reserve Fund Life Ass'n.*, (6th C. C. A. 1901) 112 Fed. 453, affirmed 190 U. S. 147, the court said:

> "It is a rule of almost universal application that, between courts of the same sovereignty and concurrent jurisdiction, the court which first acquires jurisdiction of the controversy or of the res should be suffered by every other court to decide every question within the sphere of the pending cause, and to continue in the possession of the subject-matter of the controversy until every question before it shall be decided and the res discharged from its control. This rule has its foundation, perhaps, in comity; but the fruits of its recognition have been so beneficient, when applied to courts of concurrent jurisdiction created by different sovereignties, as to justify the conclusion that it is not only a rule of comity,

[1] July 1, 1898, c. 541, § 9, 30 Stat. 549, 11 USCA 27.

but one of necessity. The cases are numerous which recognize its binding force and illustrate its wide application. * * * The courts of the state and of the United States are, as to each other, foreign courts. Nevertheless the power sometimes exercised by courts of equity to restrain parties within their jurisdiction from proceeding in a foreign court does not apply to them, and it has long been recognized that state courts cannot enjoin proceedings in the courts of the United States, nor the latter in the former courts. Story, Eq. Jur. §§ 899, 900; *Bank* v. *Stevens*, 169 U. S. 436, 462, 463, 18 Sup. Ct. 403, 42 L. Ed. 807. Section 720 [Section 265 of the Judicial Code] originated in 1793, and is a legislative command affirmatively enforcing this rule of comity by expressly prohibiting the enjoining of proceedings in state courts, except when authorized in bankrupt cases. * * * (pp. 464, 465.)

To prevent such unnecessary conflicts of jurisdiction as that presented on this record, the statute (now section 720, Rev. St.) was enacted. The burden is upon one who asserts an interpretation of that provision which would tend to weaken its force and defeat its beneficient purposes. The spirit of the rule of comity between courts prevents interference, not upon any question of ultimate right or wrong, but upon the question as to which jurisdiction had first attached." (pp. 467, 468.)

If bankruptcy courts were permitted, by writs of injunction, as was done in this case, to oust the prior possession by a state court of general jurisdiction of a controversy over which the jurisdiction of the two courts is at most only concurrent, the result would be just such an "unnecessary conflict of jurisdiction" as Section 265 of the Judicial Code is primarily intended to prevent.

For the reasons stated the Circuit Court of Appeals should have set aside the order of the District Court in this case.

Point III.

A Bankruptcy Court May Not Disregard the Decisions of the Highest Court of a State in Determining Whether in That State an Assignment of Future Wages Creates Such a Lien As Is Preserved from Discharge in Bankruptcy by Section 67 (d) of the Bankruptcy Act.

Without in any way waiving its contention that the District Court had no jurisdiction to pass upon the merits of the question presented to it, petitioner also submits that it decided the issues incorrectly. Petitioner, by the assignment of wages given by respondent prior to his adjudication, acquired such a lien as is exempted by the provisions of Section 67 (d) of the Bankruptcy Act from the operation of the bankrupt's discharge.

Section 67 (d) of the Bankruptcy Act[1] provides:

> "Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title, and for a present consideration, * * * shall, to the extent of such present consideration only, not be affected by anything herein."

The liens referred to in the above section are such as are created by the laws of the several states. The federal courts follow the decisions of the highest courts of the several states in determining the force and effect of liens created under state law.

Peck v. *Jeness*, 48 U. S. (7 How.) 612, 620 (1849).

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[1] July 1, 1898, c. 541, § 67(d), 30 Stat. 564, 11 USCA 107.

Dooley v. *Pease,* 180 U. S. 126, 128 (1901).
Thompson v. *Fairbanks,* 196 U. S. 516, 522 (1905).
Humphrey v. *Tatum,* 198 U. S. 91 (1905).
Hiscock v. *Varick Bank of New York,* 206 U. S. 28, 37 (1906).
Benedict v. *Ratner,* 268 U. S. 353 (1925).
In re Robert Jenkins Corporation (1st C. C. A. 1927) 17 Fed. (2d) 555.
In re Simpson (9th C. C. A. 1929), 35 Fed. (2d) 840.
Sims v. *Jamison* (9th C. C. A. 1933), 67 Fed. (2d) 409.

All of the above cases, except *Dooley* v. *Pease,* are bankruptcy cases, and all of those except the *Hiscock* case involve the validity of a lien given upon property to be acquired in the future. Judge Sparks, in *In re Skorcz,* (7th C. C. A. 1933), 67 Fed. (2d) 187, adopted by the same court as its opinion in this case (R. 34), recognized that his decision was contrary to the Illinois law of wage assignments, but relied upon *Swift* v. *Tyson,* 41 U. S. (16 Peters) 1, 17 and *Guffey* v. *Smith,* 237 U. S. 101, 114, where it was held that in common law actions the Federal courts are not bound by local decisions on points of general law. In view of the cases cited above it cannot be supposed that this court has ever considered that the doctrine of *Swift* v. *Tyson* applies in a bankruptcy case where the nature and extent of a lien are in question.

The Supreme Court of Illinois holds that in Illinois an assignment of future wages creates such a lien as gives the assignee a vested property right from the date of the assignment, and that such a

lien is within the terms of Section 67 (d) of the Bankruptcy Act, and is therefore not invalidated by the assignor's discharge in bankruptcy.

Mallin v. *Wenham*, 209 Ill. 252, 70 N. E. 564.

Monarch Discount Co. v. *C. & O. Railway Co.*, 285 Ill. 233, 120 N. E. 743.

Such being the law in Illinois, the District Court should have applied it in this case, and held that the bankrupt's discharge was not a bar to petitioner's suit upon the wage assignment in the Municipal Court of Chicago. We have in mind, of course, that the Federal courts in a number of cases involving the effect of the assignor's discharge in bankruptcy upon a wage assignment, have held that such assignment does not create a lien upon future wages until the wages are earned.[1]

Several of these cases criticize the Illinois doctrine.[1] None of them, however, arose in a jurisdiction where the Illinois doctrine prevails, and conse-

[1] *In re West* (D. C. Or., 1904), 128 Fed. 205; *In re Home Discount Co.* (D. C. Ala. 1906) 147 Fed. 538; *In re Ludeke* (D. C. N. Y. 1909), 171 Fed. 292; *In re Lineberry* (D. C. Ala. 1910), 183 Fed. 338; *In re Fellows* (D. C. Okla. 1930), 43 Fed. (2d) 122; *In re Vorhees* (D. C. Ohio, 1930), 41 Fed. (2d) 81; *In re Potts* (D. C. Ida. 1931), 54 Fed. (2d) 144; *Seaboard Small Loan Corp.* v. *Ottinger* (4th C. C. A. 1931), 50 Fed. (2d) 856.

[1] Of interest is "Wage Assignments in Illinois" by A. Fortas, in Yale Law Journal, Vol. XLII No. 4 (February, 1933), pages 527-548, where the conflicting cases are noted, and Professor Williston (Contracts, 1925, Sec. 414) and Restatement of Contracts (A. L. I. 1932), Sec. 154, are cited to the effect that the Illinois rule is technically sound. The decisions contra are characterized as variations introduced by the supposed "hardship of the case." And to the same effect is "Discharge in Bankruptcy and the Assignment of Future Wages," by F. M. Merrifield, in Univ. of Chicago Law Review, Vol. I, No. 3 (January, 1934), pages 488-490.

quently none of them passed upon the question of whether the bankruptcy courts are bound to follow the local rule in jurisdictions where it *is* the law that a wage assignment gives the assignee a present vested right in the assignor's unearned wages.

Although the decisions in these cases are not, for the reason stated, controlling in this case, the language used in many of them goes further than was necessary to sustain the decisions and lays down a supposed principle of law upon which respondent in this case relied heavily below, and which seems to have governed the Circuit Court of Appeals in its decision of this case.[1] That supposed principle is that it is impossible to create a present lien against wages to be earned in the future, and that an assignment of such wages cannot be more than a mere agreement for a lien which will have no actual existence until and unless the wages are actually earned. If that were a sound principle it might follow, as some courts have thought it must, that when an assignor of future wages becomes a bankrupt before such wages are earned, the assignee thereof has not yet acquired such a lien right as can be preserved to him by the operation of Section 67(d) of the Bankruptcy Act.

Respondent has not denied in this case that the Supreme Court of Illinois has solemnly declared that there may be a present lien upon future wages, and that by the giving of an assignment of such wages in Illinois, such a present lien is in fact created. Respondent instead has contended that despite the decision of the Supreme Court of Illinois, such a thing, by its very nature, cannot be. We believe that

[1] See opinion of Judge Sparks in *In re Skorcz* (7th C. C. A. 1933) 67 Fed. (2d) 187, 188-90, adopted by the same court as its opinion in this case (R. 34).

in this respondent is in error, and we submit that the Circuit Court of Appeals in this case went astray in relying upon such a doctrine.

The most representative statement of the supposed impossibility of a lien upon unearned wages is found in *Seaboard Small Loan Corporation* v. *Ottinger* (4th C. C. A. 1931), 50 F. (2nd) 856, 857, relied upon by the Circuit Court of Appeals in this case,[1] where it was stated (p. 857):

> "The rule is that an assignment of wages to be earned in the future is not good at law because ineffective to pass legal title, but will be enforced in equity. It is enforced in equity, not as a conveyance in præsenti of what manifestly does not exist, but because it is regarded in equity as a contract to take effect and attach to the wages assigned as soon as they come in *esse*. Until the wages are earned, it is regarded as an agreement to convey; after that time as a conveyance. * * *
>
> It is true that the rights of lienors under existing liens not forbidden by the Bankruptcy Act are preserved by that act; but the trouble here is that there was no lien on the wages in question existing at the time of the filing of the petition in bankruptcy. The loan company held nothing but a debt against the bankrupt, and a contract providing for the creation of a lien in the future when wages should be earned. Before this contract could give rise to a lien, its obligation was discharged by the bankruptcy; and the debt, without which no lien could exist, was discharged also."

The court in the Ottinger case cited a number of prior decisions, relying particularly upon *In Re*

[1] See opinion of Judge Sparks in *In re Skorcz* (7th C. C. A. 1933) 67 Fed. (2d) 187, 188-190, adopted by the same court as its opinion in this case (R. 34).

West (D. C. Oregon, 1904), 128 Fed. 205, where the court said in part:

> "The theory of a lien upon the earnings of future labor is not that it attaches to such earnings from the moment of contract, of pledge or assignment, but from the moment of their existence. It is needless to say that there can be no lien upon what does not exist."

The notion that there can be no lien upon something which does not exist is demonstrably fallacious. Even at common law a lien upon live stock attached to the increase thereof. In many states mortgages of after-acquired chattels are perfectly valid. In some states mortgages of unplanted crops are valid. One such mortgage was enforced by this court in *Butt* v. *Ellett*, 86 U. S. 544 (1873).

That a chattel mortgage upon unplanted crops, if by the law of the State wherein it is created it gives the mortgagee a present lien upon such crops, will be preserved from discharge in bankruptcy was clearly stated in the recent decision of the Ninth Circuit Court of Appeals in *Sims* v. *Jamison*, 67 Fed. (2nd) 409, 410. That court clearly recognized the duty of bankruptcy courts to follow the decisions of the State courts in such matters.

Unearned wages in an existing employment are not distinguishable in nature from other types of property having no actual existence, but having a potential existence sufficient to enable them to be earmarked and subjected to rights of ownership which will attach to them as soon as they come into existence. We believe that some courts have been misled by the unobjectionable statement that no lien can *attach* to property not in existence. To say that a right cannot presently *attach* to property is, however,

far different than saying that it cannot be presently *created* against the property.

To hold that an assignment of future wages is a mere contract to give a lien in the future is to disregard facts in support of a theory. If that were really true, such an assignment would bind the assignor to do some future act, when the wages had been earned, which would then create a lien against them, and, in in default of his doing that act, the assignee would have an action for damages for breach of contract. Of course, such is not the nature of a wage assignment. Whatever rights it creates come into being when the assignment is executed. If it creates a lien at all, it must create it at that time. It contains no promise that the assignor will do any future act. It is enforced upon the theory that the assignee's right to receive the assigned wages is based upon the original instrument of assignment.

We do not deny that it may be the law in any given jurisdiction that a lien cannot be created against property not in existence, nor that it is the law in many jurisdictions that no lien is created against future wages by an assignment thereof. We deny only that there is any reason why such must be the law in every jurisdiction. The Supreme Court of Illinois has held that a lien can be created in Illinois against unearned wages. There is nothing about the nature of a lien which makes such a result impossible. A lien has no physical existence so that it must inhere in some tangible property, but is a mere right, an intangible thing which exists solely by legal definition. It is a right to subject certain property to the payment of a debt, and if the property to which it is to attach can be sufficiently identified to be set aside and subjected to the lien when

and if it comes into existence, it need have no present actual existence.

The Circuit Court of Appeals in this case justified its decision by reasoning from general principles according to the following syllogism:[1]

> (a) The Bankruptcy Act supercedes all states laws upon the subject of bankruptcy.
>
> (b) The broad purpose of the Bankruptcy Act is to give bankrupts a fresh start free from debts.
>
> (c) Therefore, any state law which results in impressing a lien upon wages earned by a bankrupt, or other property coming into his possession, after his adjudication must be in conflict with such broad purpose of the act and therefore unenforcible.

In support of its reasoning the court relies upon *Board of Trade* v. *Johnson,* 264 U. S. 1 (1924); *Board of Trade* v. *Weston* (7th C. C. A. 1917) 243 Fed. 332; *Williams* v. *U. S. Fidelity & Guaranty Co.* 236 U. S. 549 (1915) and *In re Voarhees,* (D. C. Ohio 1930) 41 Fed. (2d) 81.

We can admit the premises of the court's argument but not that the conclusion follows or that it is justified by the authorities relied upon.

In *Chicago Board of Trade* v. *Johnson,* 264 U. S. 1 (1924) the question was whether a membership in the Chicago Board of Trade was property, within the definition of Section 70 of the Bankruptcy Act,[2] which passed to the creditors of the bankrupt. This court said that it was, disregarding a contrary decision of the Supreme Court of Illinois. In Section 70 of the Act Congress expressly undertook to define

[1] *In re Skorcz* (7th C. C. A. 1933) 67 Fed. 187, 189, adopted by the same court as its opinion in this case (R. 34).

[2] July 1, 1898, c. 541, 30 Stats. 565.

"property." It having done so, that question became one of federal law and this court rightly held that the bankruptcy court was not bound to follow the decision of the Illinois court. In this case, on the contrary, Congress has left to the several states the definition of "liens," merely providing in Section 67 (d) of the Act that all such liens shall be preserved. The decisions of the Illinois court upon that question are therefore decisions upon matters of local lien law, as to which this court has repeatedly held that the decisions of local courts shall control.

The *Johnson* case has no application to this case except that it supports the first premise of the Circuit Court of Appeals—that when Congress has spoken upon a matter of bankruptcy law, all contrary state law must be disregarded.

Board of Trade v. *Weston* (7th C. C. A. 1917) 243 Fed. 332, involves the same question as the *Johnson* case.

The second premise of the Circuit Court of Appeals' argument is supported by *Williams* v. *U. S. Fidelity & Guaranty Co.*, 236 U. S. 549 (1915), holding that the broad purpose of the Bankruptcy Act is to give debtors a fresh start, free from debt. With that proposition no one would quarrel. The *Williams* case has no other application here, involving as it does only the question of whether a discharge in bankruptcy acquits the obligation between a bankrupt and his surety.

In proceeding to its conclusion the Circuit Court of Appeals relies upon *In re Voorhees* (D. C. Ohio 1930) 41 Fed. (2d) 81, wherein it was held that it is inconsistent with the "broad purpose of the Bankruptcy Act to give the wage earner a fresh start" to

permit the existence of a lien upon wages earned by a bankrupt after adjudication.

A careful examination of the opinion in the *Voorhees* case reveals that that court's basis for finding such inconsistency is not convincing. The court said:

> "The assignment is ancillary or auxiliary only to the debt or obligation which it is to secure, and it seems to us that when the main or primary obligation is actually discharged and extinguished by the Bankruptcy Act, it must likewise follow that the assignment is annulled and becomes unenforceable."

If that statement were true, as of course it is not, no lien could survive a discharge in bankruptcy, for in every case the underlying debt is discharged. The court went on to say:

> "Such construction is in harmony with other decisions which deny to liens the effect of attaching to after-acquired property."

We have seen that as a matter of fact in many jurisdictions liens upon property not yet in existence are perfectly valid. The court then fell back upon the doctrine of *In re West* (D. C. Ore. 1904) 128 Fed. 205, and said that there can be no lien upon future wages because they are not *in esse*. Having arrived at that conclusion the court proceeded to reason that if the state law of Ohio should attempt to preserve the force of a wage assignment from being wiped out by a discharge in bankruptcy, it would amount to an invalid attempt to modify the provisions of the Bankruptcy Act. The court considered the Ohio wage loan statute not as one which created a lien, so that Section 67 (d) of the Bankruptcy Act would apply, but as one which attempted to keep alive a simple contract obligation in contravention of the

Act. In Illinois no such meaning can be read into the local law. The local law, as stated by the local courts, does not attempt to save from discharge a contract which the Bankruptcy Act says shall be discharged, but declares that a wage assignment creates a lien such as by the express terms of Section 67 (d) of the Bankruptcy Act is saved from discharge. We submit that the *Voorhees* case is not sound law.

The fallacy in the argument of the Circuit Court of Appeals is that this case cannot be decided upon the "broad principles" of the Bankruptcy Act because the Act contains a specific provision, Section 67 (d), which controls this case. If the Act undertook to define "liens" the situation would be entirely different. Such a provision would have to be construed, as a matter of federal law, in harmony with the whole purpose of the act. However, it does not do so, but leaves such definition to the state courts.

Moreover, there is no sound basis for saying that the broad purpose of the Act—to give debtors a fresh start—is entirely free of limitations. That objective is undoubtedly a beneficient public purpose, but there is a conflicting public benefit to be conserved by the preservation of liens given by debtors as security. Without such liens the flow of credit would be much impeded and credit, we are coming to understand, is the economic life-blood of the nation. The Act may well have been drafted with this countervailing public policy in mind.

It is apparent to anyone reading the opinions of the lower Federal Courts that a great deal of prejudice has entered into their decisions in wage loan cases. A wage debtor is commonly pictured as the

victim of a harsh and oppressive contract, ground between the millstones of the disapproval of his employer and the importunities of his creditor. The history of wage lending perhaps makes this attitude understandable, but it is not applicable to the facts in this case. The wage assignment here involved was made under the provisions of the Illinois Small Loan Act, which regulated all of its terms. There is no showing that it was not based upon ample consideration, that the rate of interest charged was excessive or that petitioner took advantage of any necessity of respondent to induce him to borrow money from it. Respondent will not be actually deprived of any of his wages by subjecting them to petitioner's lien, for he has in effect drawn them in advance, and doubtless has spent them and enjoyed the fruits thereof before going through bankruptcy.

The opportunity of borrowing against his future earnings is often of inestimable value to the wage earner. Our industrial civilization has developed such uncertainties of economic existence that the ability to obtain credit in times of need is of great importance. A man of property can borrow money by pledging his tangible wealth, but a laboring man often has no wealth except his ability to work. The opportunity of borrowing against that ability increases the flexibility of a wage earner's resources and gives him a credit reserve upon which to draw in emergencies. If wage earners can be permitted to borrow against their future earnings and then immediately wipe out the security by going through bankruptcy, wage lending will be greatly restricted, thus depriving of credit a class of persons who often desperately need it. Moreover, the increased risk to lenders will do much to offset what has been accom-

plished in making credit available to wage earners at a reasonable cost.

It should not be overlooked that wage earners are not the only class of persons who will be affected by the decision in this case. The credit resources of farmers and fruit growers, who often find it necessary to borrow upon the security of future crops, will also be profoundly affected. The social desirability of making such credit available to them, both from private and from public sources, is currently of great importance.

In summary of Point III., we submit:

1. Section 67 (d) of the Bankruptcy Act preserves from destruction by discharge in bankruptcy the liens created by the laws of the several states.

2. Whatever may be the law in other states, the law in Illinois is that an assignment of future wages creates a present lien against such wages, which will attach to them immediately upon their coming into existence.

3. Despite the doctrine of the *Ottinger* case, the *West* case and other cases noted above, which was adopted by the Circuit Court of Appeals in this case, there is in fact no valid reason why such may not be the law in Illinois.

4. It is well settled that bankruptcy courts, in passing upon the nature and extent of liens created by state law, should follow the decisions of the highest courts of the several states.

5. These clear principles of law should not be tampered with for shadowy reasons of supposed public policy, for it is by no means certain that public policy is not best served in the end by protecting liens upon property not *in esse* through a literal ap-

plication of the plain provisions of the Bankruptcy Act.

We respectfully submit that the Circuit Court of Appeals in this case erred in failing to follow the above principles and in failing to hold that petitioner had a lien against wages earned by the respondent after his adjudication as a bankrupt which was not destroyed by respondent's discharge in bankruptcy.

Conclusion.

For all of the reasons above stated, petitioner respectfully submits that the decision of the Circuit Court of Appeals in this case should be reversed.

Respectfully submitted,

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By Richard Mayer,
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No. 703

LOCAL LOAN COMPANY, a Corporation,

v.

WILLIAM HUNT,

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IN THE

Supreme Court of the United States

October Term, A. D. 1933.

No. 783

LOCAL LOAN COMPANY, a Corporation,
Petitioner and Appellant Below,

v.

WILLIAM HUNT,
Respondent and Appellee Below.

On Petition For A Writ of Certiorari To The United States Circuit Court of Appeals For The Seventh Circuit.

BRIEF FOR THE RESPONDENT AND APPELLEE IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals appears on page 34 of the record. It has not been reported. It is in part at least a reaffirmance of the same Court's opinion in *In re Skorcz*, reported in *67 Fed. (2d) 187, (7th C. C. A., 1933)*.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 17, 1933 (R. 35). The petition for a writ of certiorari was filed February 12, 1934. The jurisdiction of this Court is invoked under *Section 240 (a) of the Judicial Code* as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. Does a Federal District Court sitting in bankruptcy have the power to adjudicate the effect of its own discharge upon a particular obligation of a bankrupt?

2. Does a Federal Court sitting in bankruptcy have power, after a bankrupt has been discharged, to enjoin proceedings in a state court, brought after the discharge, to enforce a claim against the bankrupt which the bankrupt alleges was barred by his discharge?

3. Is a Federal Court sitting in bankruptcy justified in disregarding the decisions of the Court of last resort of the local jurisdiction, which hold that an assignment of wages to be earned in the future under an employment existing at the time of the filing of a petition in bankruptcy creates a lien which survives discharge and enables the loan company to collect the wages earned after adjudication?

STATEMENT.

The facts are substantially as outlined by counsel for petitioner except the additional fact that before the respondent filed his voluntary petition in bankruptcy, the petitioner, on January 30, 1931, filed a notice and copy of the wage assignment in question on respondent's employer, Grand Trunk Western Railroad Company, but the petitioner withdrew such notice on February 12, 1931. The respondent filed in bankruptcy shortly thereafter, to-wit, on March 3, 1931.

ARGUMENT.

I.

The decision of the Circuit Court of Appeals in the case at bar is not in conflict with any decision of any other Circuit Court of Appeals in the nine Circuits. In the case of *Magnum Co. v. Coty, 262 U. S. 159*, at page *163*, Mr. Chief Justice Taft says:

> "The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes, first to secure uniformity of decision between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort."

The Chief Justice goes on to point out that eighty per cent of those who petition for certiorari do not grasp the necessary limitations upon the issuance of this writ. He further points out that the writ cannot be used to give a defeated party in the Circuit Court of Appeals a new hearing in the United States Supreme Court. The Court states further that the petition for certiorari should in the first instance be made to the Circuit Court of Appeals which with its complete knowledge of the case may with full consideration promptly pass on it. The Chief Justice says, referring to the Circuit Court of Appeals, last paragraph, page 163:

> "That court is in a position to judge first whether the case is one likely under our practice to be taken up by us on certiorari, and second, whether the balance of convenience requires a suspension of its decree and a withholding of its mandate."

At the top of page 164 the Court says, referring to the Circuit Court of Appeals: "If it thinks a question involved should be ruled upon by this Court, it may cer-

tify it". In the case at bar the Circuit Court of Appeals did not certify any question to the United States Supreme Court. This is significant in that it clearly shows that the Circuit Court of Appeals did not regard this cause as raising any such questions as need be passed upon by this Court of last resort.

Assuming for the sake of argument that the District Court did adjudicate the effect of its own discharge in the case at bar when it restrained the petitioner from proceeding further in the State Court on the wage assignment, the three old Circuit Courts of Appeal cases cited by petitioner are not on all fours with the case at bar. None of these three cited cases involve an assignment of future unearned wages with its question of public policy. *In re Havens, 272 F. 975 (2nd C. C. A., 1921)*, the Court relied upon *Hellman v. Goldstone, 161 F. 913 (3rd C. C. A., 1908)*, in holding that the bankruptcy court cannot restrain the state court in proceedings on a claim against the bankrupt. This claim was not a wage assignment and did not involve questions of public policy arising out of the very nature of wage assignments with their possible creation of the status of involuntary servitude in the wage earner, *i. e.*, a giving by the wage earner of a virtual lien on his body. The facts in the *Havens case* are somewhat complicated and this 1921 decision in the Second Circuit is in no way applicable to the case at bar. Examining the decision in the *Hellman case, 161 F. 913 (3rd C. C. A. 1908)*, relied upon in the *Havens case, supra*, we again find the facts entirely different from those in the case at bar. No wage assignment is involved, however in this cited case the Court uses language which might be construed as being in complete accord with the Circuit Court of Appeals in the case at bar. On page 914 the Court says: "Bankrupt's remedy lies * * * in the federal

court for denial to him of a right under a law of the United States". Having shown that the Second and Third Circuits are not in conflict with the Seventh Circuit in the case at bar, we find also that the First Circuit is not in conflict with the Seventh Circuit in the case at bar. The cited case *In re Marshall Paper Co. (1st C. C. A., 1900), 102 F. 872*, can be readily distinguished from the case at bar in that no wage assignment with its peculiar social implications is involved. Also the cited case simply rules that a right to a discharge and its effect are wholly distinct questions which respondent grants is true. In this cited case a creditor was seeking to prevent a corporation from being discharged because its discharge would have an injurious effect upon the creditor's right to enforce the secondary liability of the directors of the bankrupt corporation. This decision of the First Circuit is obviously not in conflict in any sense with the Seventh Circuit in the case at bar. Therefore, under Point I of petitioner's argument (page 9, petitioner's brief) there has been shown no conflict in the decisions of the various Circuit Courts of Appeal to justify the issuance of the writ of certiorari. The very recent case of *Sims v. Jamison (9th C. C. A., 1933), 67 F. (2d) 409*, holds that a bankruptcy court has jurisdiction to adjudicate the effect of its own discharge. In this *Sims case* decided by the Circuit Court of Appeals in November, 1933, in the Ninth Circuit, the Court ruled that an assignment by chattel mortgage of a non-existing apple crop to be grown in the future would be extinguished in bankruptcy like any other obligation of the bankrupt if the adjudication took place before the crops came into existence. This Circuit Court of Appeals ruled that the bankruptcy court had power to adjudicate the effect of its own discharge and enjoined the holder of a chattel mortgage from harassing and annoying the bankrupt by foreclosing against the apple crop. The Circuit

Court of Appeals in the Fourth Circuit in 1931 in the case of *Seaboard Small Loan Co. v. Ottinger, 50 Fed. (2d) 856,* also held in accord with the Circuit Court of Appeals in the case at bar. The vast majority of the United States District Courts and State Courts are in accord with the decision of the Circuit Court of Appeals in the case at bar.[1]

II.

In view of the lack of conflict in the decisions of the various Circuit Courts of Appeal in the nine circuits respondent contends that the question of whether a Federal Bankruptcy Court has power after discharge to oust a state court of jurisdiction to determine the effect of such discharge is not of such importance that it should be passed upon by the United States Supreme Court. The Federal District and Federal Circuit Courts of Appeal are in almost unanimous accord that the wage assignments are not enforceable after bankruptcy. The writ of certiorari was not intended for the purpose of again litigating this question. Every Circuit Court of Appeal has held that these wage assignments are extinguished by bankruptcy. It should not be litigated further in our court of last resort.

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1 In re West, 128 Fed. 205, (D. C. Oregon 1904); In re Karns, 148 Fed. 143, (D. C. S. D. Ohio 1905); In re Home Discount Co., 147 Fed. 538, (D. C. N. D. Alabama 1906); In re Ludeke, 171 Fed. 292, (D. C. E. D. New York 1909); In re Lineberry, 183 Fed. 338 (D. C. N. D. Alabama 1910); In re Gillespie, 209 Fed. 1003, (D. C. E. D. New York 1913); In re Green, 213 Fed. 542 (D. C. E. D. New York 1914); In re Voorhees, 41 Fed. (2nd) 81 (D. C. N. D. Ohio 1930); In re Fellows, 43 Fed. (2nd) 122, (D. C. Oklahoma 1930); In re Potts, 54 Fed. (2nd) 144 (D. C. Idaho 1931); Levi v. Loevenhart, 138 Ky. 133 (1910), s. c. 30 L. R. A. (N. S.) 375; Leitch v. No. Pac. Ry. Co., 95 Minn. 35, s. c. 103 N. W. 704 (1905); Rate v. Amer. Smelting & Refining Co., 56 Mont. 277, s. c. 184 Pac. 478 (1910); Hupp v. Union Pac. Ry. Co., 99 Neb. 654, s. c. 157 N. W. 343 (1916); Public Finance Co. v. Rowe, 123 Ohio St. 206, s. c. 174 N. E. 738 (1931).

The United States Supreme Court has consistently been opposed to granting a new hearing to a defeated party in the Circuit Court of Appeals. *Magnum Co. v. Coty, 262 U. S. 159.* Suffice it to say, *section 2 (15) of the Bankruptcy Act* provides the power of a bankruptcy court to restrain the loan company in the case at bar after discharge. This section provides that courts of bankruptcy may "make such orders, issue such process and enter such judgments" as may be necessary to enforce and carry out the intention of the entire bankruptcy act and respondent contends that it was the purpose of Congress in adding *section 2 (15)* to the Bankruptcy Act to permit the bankrupt to obtain a fresh financial start in life. For the bankruptcy court to refuse to restrain the creditor in these wage assignment cases would in many instances mean disaster for the bankrupt and thereby defeat the very purpose of bankruptcy. *In re Home Discount Co., 147 Fed. 538,* and cases cited therein.

Section 265 of the Judicial Code (Title 28, Section 379, U. S. C. A.), provides that:

> "The writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The case at bar clearly comes within the exception and if the restraining order in the case at bar results in the bankruptcy court determining the effect of a discharge in bankruptcy, it is acting within its equitable powers as expressly given by said *Section 2 (15) of the Bankruptcy Act. Seaboard Small Loan Corp. v. Ottinger, 59 Fed. (2nd)* at page *859,* decided in 1931 by the Circuit Court of Appeals, Fourth Circuit; *Sims v. Jamison, 67 Fed. (2d) 409 (9th C. C. A., 1933).*

III.

The Bankruptcy Court does not follow the decisions of the State Supreme Court when the decisions of the State Supreme Court are in conflict with the ruling of the United States Supreme Court as to the nature and extent of an alleged lien on something not yet in existence at the date of the assignment thereof. In the case of *Straton v. New, 283 U. S.,* on page *321 (1930)*, the United States Supreme Court said, referring to the Bankruptcy Court: "It may inquire into the validity of liens, marshal them, and control their enforcement and liquidation". In *Board of Trade v. Johnson, 264 U. S. 1*, at page *11*, the United States Supreme Court said, quoting the Circuit Court of Appeals in the case of *Board of Trade v. Weston, 243 Fed. 332:*

> "Congress derives its power to enact a bankrupt law from the Federal Constitution * * *; but when the language of Congress indicates a policy requiring a broader construction of the statute than the state decisions would give it, Federal Courts cannot be concluded by them."

Again in the case of *International Shoe Co. v. Pinkus, 278 U. S. 261*, at page *265*, the United States Supreme Court said: "The national purpose to establish uniformity necessarily excludes state regulation," referring to the Bankruptcy Act. From the above authorities it is clear that state laws or decisions which contravene the expressed or implied intention of the Bankruptcy Act are not given full faith and credit by the Federal Court, but are superseded by the Federal Court's interpretation of the Bankruptcy Act.

The United States Supreme Court in the case of *Butt v. Ellett, 86 U. S. 544 (19 Wallace)*, held that a chattel mort-

gage on a future cotton crop not yet planted to secure the payment of rent on a cotton plantation did not create a lien because the crop was not in existence when the chattel mortgage was made. The Court said:

> "The mortgage clause in the contract of lease of the 15th of January, 1867, executed by Sillers and Graham, could not operate as a mortgage, because the crops to which it relates were not then in existence. When the crops grew, the lien attached and bound them effectually from that time."

Clearly under this ruling had the tenant gone into bankruptcy before the crops grew, the assignment of those future crops would have been extinguished by the adjudication in bankruptcy. Thus it is clear that the Illinois Supreme Court in the old 1904 case of *Mallin v. Wenham, 209 Ill. 252,* which ruled that a present lien exists upon the execution of an assignment of future unearned wages to secure a loan is directly contrary to the ruling of the United States Supreme Court insofar as the question is concerned of whether a valid present lien is created by the assignment of a non-existent *res.* The Circuit Court of Appeals in the case at bar quite properly refused to recognize the Illinois Supreme Court ruling and in so doing followed the opposite rule laid down in the case of *Butt v. Ellett, supra. Butt v. Ellett* has never been reversed and is the guiding principle of law as to whether or not there exists a valid lien upon future unearned wages in the case at bar.

The opinion of the Court in the case of *In re Skorez, 67 Fed. (2d) 187 (June 1933, 7th C. C. A.),* clearly sets forth almost all of the principles involved in the case at bar. Two State Supreme Courts in relatively late decisions have passed upon the question of whether a present lien exists.

The Supreme Judicial Court of Massachusetts in the case of *Taylor v. Barton-Child Co., 117 N. E. 43 (1917)*, ruled that the assignment of book accounts which are to come into existence in the future in connection with an established business will not be enforced in equity against the trustee in bankruptcy, although a book account is a chose in action. No present property right could pass by this assignment. Therefore no lien existed.

The Supreme Court of Iowa in the case of *Gannon v. Graham, et al., 231 N. W. 675 (1930)*, ruled that the assignment or mortgage of an expectancy in the estate of a parent to secure a debt of the son is wiped out in bankruptcy because no lien was created even though the ancestor died after adjudication but before discharge. No present property right could pass by this assignment. Therefore no lien existed.

Therefore respondent contends that the petitioner throughout his entire argument wrongfully assumes that a lien exists on a non-existing *res*. The vast majority of both Federal and State courts hold that there is no such lien.

CONCLUSION.

Respondent contends that there is no conflict in the decisions of the various Circuit Courts of Appeal on the questions involved in the case at bar with regard to wage assignments in bankruptcy and the procedure with reference to protecting the wage earning bankrupt from importunate creditors. There is no conflict of jurisdiction between Federal and State courts on the questions involved in the case at bar, contrary to the well established rules of law relating to the paramount right of Federal

courts to interpret and administer the bankruptcy act taking it as a whole so as to confer its entire benefits upon the bankrupt. On grounds of public policy alone, the bankruptcy court has equitable power to protect the bankrupt *in personam* as well as *in rem*. These questions having been properly passed upon by the District Court and Circuit Court of Appeals below, there is nothing in this case at bar of sufficient importance to justify the issuance of the writ of certiorari as prayed for and respondent asks that said petition be dismissed.

Respectfully submitted,

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Counsel for Respondent and Appellee below.

SUPREME COURT OF THE UNITED STATES.

No. 783.—October Term, 1933.

Local Loan Company, Petitioner, vs. William Hunt.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 30, 1934.]

Mr. Justice Sutherland delivered the opinion of the Court.

On September 17, 1930, respondent borrowed from petitioner the sum of $300, and as security for its payment executed an assignment of a portion of his wages thereafter to be earned. On March 3, 1931, respondent filed a voluntary petition in bankruptcy in a federal district court in Illinois, including in his schedule of liabilities the foregoing loan, which constituted a provable claim against the estate. Respondent was adjudicated a bankrupt; and, on October 10, 1932, an order was entered discharging him from all provable debts and claims. On October 18, 1932, petitioner brought an action in the municipal court of Chicago against respondent's employer to enforce the assignment in respect of wages earned after the adjudication. Thereupon, respondent commenced this proceeding in the court which had adjudicated his bankruptcy and ordered his discharge, praying that petitioner be enjoined from further prosecuting said action or attempting to enforce its claim therein made against respondent under the wage assignment. The bankruptcy court, upon consideration, entered a decree in accordance with the prayer; and this decree on appeal was affirmed by the court below (67 F. (2d) 998), following its decision in *In re Skorca*, 67 F. (2d) 187.

Challenging this decree, petitioner contends: That the bankruptcy court was without jurisdiction to entertain a proceeding to enjoin the prosecution of the action in the municipal court; that, assuming such jurisdiction, the rule is that an assignment of future wages constitutes an enforceable lien; but that, in any event, the highest court of the State of Illinois has so decided, and by that decision this court is bound.

First. The pleading by which respondent invoked the jurisdiction of the bankruptcy court in the present case is in substance and effect a supplemental and ancillary bill in equity, in aid of and to effectuate the adjudication and order made by the same court. That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled. *Root* v. *Woolworth,* 150 U. S. 401, 410-412; *Julian* v. *Central Trust Co.,* 193 U. S. 93, 112-114; *Riverdale Mills* v. *Manufacturing Co.,* 198 U. S. 188, 194 *et seq.; Freeman* v. *Howe,* 24 How. 450, 460. And this, irrespective of whether the court would have jurisdiction if the proceeding were an original one. The proceeding being ancillary and dependent, the jurisdiction of the court follows that of the original cause, and may be maintained without regard to the citizenship of the parties or the amount involved, and notwithstanding the provisions of § 265 of the Judicial Code (R. S., § 720), U. S. C., Title 28, § 379.[1] *Julian* v. *Central Trust Co., supra,* 112; *Dietzsch* v. *Huidekoper,* 103 U. S. 494, 497; *Root* v. *Woolworth, supra,* 413; *M'Donald* v. *Seligman,* 81 Fed. 753; *St. Louis, I. M. & S. Ry. Co.* v. *Bellamy,* 211 Fed. 172, 175-177; *Brun* v. *Mann,* 151 Fed. 145, 150.

These principles apply to proceedings in bankruptcy. *In re Swofford Bros. Dry Goods Co.,* 180 Fed. 549, 554; *Sims* v. *Jamison,* 67 F. (2d) 409, 410; *Pell* v. *M'Cabe,* 256 Fed. 512, 515-516; *Seaboard Small Loan Corporation* v. *Ottinger,* 50 F. (2d) 856, 859. Petitioner relies upon a number of decisions where other federal courts sitting in bankruptcy have declined to entertain suits similar in character to the present one, on the ground that the effect of a discharge in bankruptcy is a matter to be determined by any court in which the discharge may be pleaded. See, for example, *Hellman* v. *Goldstone,* 161 Fed. 913; *In re Marshall Paper Co.,* 102 Fed. 872, 874; *In re Weisberg,* 253 Fed. 833, 835; *In re Havens,* 272 Fed. 975. To the extent that these cases conflict with the view just expressed they are clearly not in harmony with the general rule in equity announced by this court. And we find

[1] "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

nothing, either in the nature of the bankruptcy court or in the terms of the bankruptcy act, which necessitates the application of what would amount to a special rule on this subject in respect of bankruptcy proceedings. Courts of bankruptcy are constituted by §§ 1 and 2 of the bankruptcy act (U. S. C., Title 11, §§ 1 and 11), and are invested "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings," etc. The words "at law" were probably inserted to meet clause (4) of § 2, which empowers such courts to arraign, try and punish certain designated persons for violations of the act. *Bardes* v. *Hawarden Bank*, 178 U. S. 524, 534-536. But otherwise courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity. *Bardes* v. *Hawarden Bank, supra*, 535; *In re Rochford*, 124 Fed. 182, 187; *In re Siegel-Hillman Dry Goods Co.*, 111 Fed. 980, 983; *Swarts* v. *Siegel*, 117 Fed. 13, 16; *Dodge* v. *Norlin*, 133 Fed. 363, 368-369; *In re Swofford Bros. Dry Goods Co., supra*, at p. 553; *In re Lahongrais*, 5 F. (2d) 899, 901; *French* v. *Long*, 42 F. (2d) 45, 47. And, generally, proceedings in bankruptcy are in the nature of proceedings *in rem*, adjudications of bankruptcy and orders of discharge being, as this court clearly has treated them, in every essential particular decrees in equity determining a *status*. *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 192; *Commercial Bank of Manchester* v. *Buckner*, 20 How. 108, 118, 119.

What has now been said establishes the authority of the bankruptcy court to entertain the present proceeding, determine the effect of the adjudication and order, and enjoin petitioner from its threatened interference therewith. It does not follow, however, that the court was bound to exercise its authority. And it probably would not and should not have done so except under unusual circumstances such as here exist. So far as appears, the municipal court was competent to deal with the case. It is true that respondent was not a party to that litigation; but undoubtedly it was open to him to intervene and submit to that court the question as to the effect upon the subject matter of the action of the bankruptcy decrees. And it may be conceded that the municipal court was authorized in the law action to afford relief the equivalent of that which respondent now seeks in equity. Nevertheless, other considerations aside, it is clear that the legal remedy

thus afforded would be inadequate to meet the requirements of justice. As will be shown in a moment, the sole question at issue is one which the highest court of the State of Illinois had already resolved against respondent's contention. The alternative of invoking the equitable jurisdiction of the bankruptcy court was for respondent to pursue an obviously long and expensive course of litigation, beginning with an intervention in a municipal court and followed by successive appeals through the state intermediate and ultimate courts of appeal, before reaching a court whose judgment upon the merits of the question had not been predetermined. The amount in suit is small, and, as pointed out by Judge Parker in *Seaboard Small Loan Corporation* v. *Ottinger*, *supra*, at p. 859, such a remedy is entirely inadequate because of the wholly disproportionate trouble, embarrassment, expense, and possible loss of employment which it involves.

Second. Whether an assignment of future earned wages constitutes a lien within the meaning of § 67 (d) of the bankruptcy act,[2] is a matter upon which the decisions of the state and federal courts are not in complete accord; although by far the larger number of cases and the greater weight of authority are in the negative. We do not stop to review the state decisions. Among those which deny the existence of the lien are *Leitch* v. *Northern Pacific Ry. Co.*, 95 Minn. 35, 38; *Lævi* v. *Loevenhart & Co.*, 138 Ky. 133, 136; *Public Finance Co.* v. *Rowe*, 123 Ohio St. 206; *Hupp* v. *Union Pac. R. Co.*, 99 Neb. 654. The only state cases definitely to the contrary which have been called to our attention are certain Illinois cases, mentioned later, and *Citizens Loan Assoc.* v. *Boston & Maine R. R.*, 196 Mass. 528. The lower federal courts which have had occasion to consider the question concur in the view that the lien has no existence or is ineffective as against an adjudication and discharge in bankruptcy. Judge Bellinger, in *In re West*, 128 Fed. 205, succinctly states the ground of his ruling in accordance with that view as follows:

"The discharge in bankruptcy operated to discharge these obligations as of the date of the adjudication, so that the obligations

[2] "Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by this Act." U. S. C. Title 11, § 107 (d).

were discharged before the wages intended as security were in existence. The law does not continue an obligation in order that there may be a lien, but only does so because there is one. The effect of the discharge upon the prospective liens was the same as though the debts had been paid before the assigned wages were earned. The wages earned after the adjudication became the property of the bankrupt clear of the claims of all creditors."

This conclusion finds ample support in the following decisions among others. *In re Home Discount Co.*, 147 Fed. 538, 547 *et seq.*; *In re Lineberry*, 183 Fed. 338; *In re Voorhees*, 41 F. (2d) 81; *In re Fellows*, 43 F. (2d) 122; *In re Potts*, 54 F. (2d) 144; and especially *Seaboard Small Loan Corporation* v. *Ottinger, supra.*

The earning power of an individual is the power to create property; but it is not translated into property within the meaning of the bankruptcy act until it has brought earnings into existence. An adjudication of bankruptcy, followed by a discharge, releases a debtor from all previously incurred debts, with certain exceptions not pertinent here; and it logically cannot be supposed that the act nevertheless intended to keep such debts alive for the purpose of permitting the creation of an enforceable lien upon a subject not existent when the bankruptcy became effective or even arising from, or connected with, preexisting property, but brought into being solely as the fruit of the subsequent labor of the bankrupt.

Third. To the foregoing array of authority petitioner opposes the decisions of the Supreme Court of Illinois in *Mallin* v. *Wenham*, 209 Ill. 252, and *Monarch Discount Co.* v. *C. & O. Ry. Co.*, 285 Ill. 233. Undoubtedly, these cases hold, as petitioner asserts, that in Illinois an assignment of future wages creates a lien effective from the date of the assignment, which is not invalidated by the assignor's discharge in bankruptcy. The contention is that even if the general rule be otherwise, this court is bound to follow the Illinois decisions, since the question of the existence of a lien depends upon Illinois law.

We find it unnecessary to consider whether this contention would in a different case find support in § 34 of the Judiciary Act of 1789, now § 725, Title 28, U. S. C.,[3] since we are of opinion that it is

[3] "The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

precluded here by the clear and unmistakable policy of the bankruptcy act. It is important to bear in mind that the present case is one not within the jurisdiction of a state court, but is a dependent suit brought to vindicate decrees of a federal court of bankruptcy entered in the exercise of a jurisdiction essentially federal and exclusive in character. And it is that situation to which we address ourselves, and to which our decision is confined.

One of the primary purposes of the bankruptcy act is to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." *Williams* v. *U. S. Fidelity Co.*, 236 U. S. 549, 554-555. This purpose of the act has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns *at the time of bankruptcy*, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt. *Stellwagen* v. *Clum*, 245 U. S. 605, 617; *Hanover National Bank* v. *Moyses, supra; Swarts* v. *Fourth National Bank*, 117 Fed. 1, 3; *United States* v. *Hammond*, 104 Fed. 862, 863; *Barton Bros.* v. *Texas Produce Co.*, 136 Fed. 355, 357; *Hardie* v. *Swafford Bros. Dry Goods Co.*, 165 Fed. 588, 591; *Gilbert* v. *Shouse*, 61 F. (2d) 398. The various provisions of the bankruptcy act were adopted in the light of that view and are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act. Local rules subversive of that result cannot be accepted as controlling the action of a federal court.

When a person assigns future wages, he, in effect, pledges his future earning power. The power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much if not more than it is a property right. To preserve its free exercise is of the utmost importance, not only because it is a fundamental private necessity, but because it is a matter of great public concern. From the viewpoint of the wage earner there is little difference between not earning at all and earning wholly for a creditor. Pauperism may be the necessary result of either. The amount of the indebtedness, or the proportion of wages assigned, may here be small, but the principle, once estab-

lished, will equally apply where both are very great. The new opportunity in life and the clear field for future effort, which it is the purpose of the bankruptcy act to afford the emancipated debtor, would be of little value to the wage earner if he were obliged to face the necessity of devoting the whole or a considerable portion of his earnings for an indefinite time in the future to the payment of indebtedness incurred prior to his bankruptcy. Confining our determination to the case in hand, and leaving prospective liens upon other forms of acquisitions to be dealt with as they may arise, we reject the Illinois decisions as to the effect of an assignment of wages earned after bankruptcy as being destructive of the purpose and spirit of the bankruptcy act.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.